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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1928

No. 306

CARSON PETROLEUM COMPANY, PETITIONER,

vs.

LEON C. VIAL, SHERIFF AND TAX COLLECTOR OF THE PARISH OF ST. CHARLES; R. A. DE BROCA, ASSESSOR FOR THE PARISH OF ST. CHARLES, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

WRIT OF ERROR AND APPEAL DISMISSED OCTOBER 15, 1928

BRIEF IN SUPPORT OF APPLICATION FOR CERTIORARI FILED OCTOBER 29, 1928

CERTIORARI GRANTED NOVEMBER 26, 1928

(33,615)

(33,615)

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IN ERROR TO AND APPEAL FROM THE SUPREME COURT OF THE STATE OF LOUISIANA

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IN DISTRICT COURT OF ST. CHARLES PARISH, TWENTY-EIGHTH JUDICIAL DISTRICT

No. 1281, Docket No. 3

CARSON PETROLEUM COMPANY

vs.

LEON C. VIAL, Sheriff, et als.

PETITION FOR A WRIT OF INJUNCTION—Filed May 10, 1924

To the Honorable the Judges of the Twenty-eighth Judicial District, Parish of St. Charles:

The petition of the Carson Petroleum Company, a Corporation organized under the laws of the State of Delaware, with respect represents:

I

Your petitioner is engaged in the business of handling oils, and more particularly selling, exporting and otherwise distributing same.

II

That neither the Port Authorities of the Port of New Orleans or of the Parish of St. Charles, nor the various Ocean Carriers therein, provide the requisites and necessary facilities for the assembling and accumulation of cargoes of oils for export.

III

That thereupon the Petroleum Import & Export Corporation, Incorporated, a Louisiana Corporation, has established and constructed the necessary tanks and other equipment and facilities for the assembling, loading and discharging of cargoes of oils for export, on the property owned by it on the river front at St. Rose, Parish of St. Charles, State of Louisiana.

IV

That due to the nature and character of the commodity and the railroad facilities available, the assembling of a cargo of oils requires from sixty to ninety days.

V

That all of said oils so assembled for export by your petitioner has been sold by your petitioner to foreign pur-
[fol. 2] chasers before the arrival of same at St. Rose.

VI

That your petitioner has contracts for deliveries of oils covering a period varying from one to seven years with Companies in France, Australia and China, said shipments to be made as near as practicable in equal monthly quantities. That the oil which is exported to the respective countries is shipped by rail from the various states of the Union in tank cars to St. Rose, Parish of St. Charles, State of Louisiana, and there assembled in tanks to await the arrival of the ship in order that it could be pumped into the said ship. That these containers are mere facilities furnished for the purpose of carrying on the business of exportation of oils.

VII

Petitioner avers that not only are its oils intended for export, but are actually sold to buyers residing in foreign countries before the arrival of the oils at St. Rose, Louisiana, and are delivered to the facilities of the Petroleum Import & Export Corporation, Incorporated, in the absence of proper facilities furnished by the ocean carriers, for shipment within a reasonable time and not for storage or warehousing purposes, and therefore are actually and continually in transit.

VIII

Petitioner further avers that the Louisiana Tax Commission and the Assessor for the Parish of St. Charles after having placed an assessment upon all of the instrumentalities and the facilities furnished for the purpose of shipping oil by the Petroleum Import & Export Corporation, Incor-

porated, have likewise placed an assessment on the oil in transit or said to be on hand in the companies' tanks, in the following language: Carson Petroleum Company, a Delaware Corporation, Merchandise at St. Rose, Oil, $200,000.

IX

Petitioner avers that it has refused to pay the tax based on the assessment of $200,000.00 for the reason that the oils [fol. 3] so taxed are in transit from other states of the Union to foreign countries and that said tax is therefore a tax and burden on interstate and foreign commerce.

X

That this is an assessment on property actually in transit and is repugnant to the provisions of Article I, Section 8, clause 3; Article 1, Section 9, clause 5; Article 1, Section 10, clause 2 of the Constitution of the United States and the laws of the State of Louisiana.

XI

Petitioner avers that the assessment of $200,000.00 on these oils is null and void and should be stricken from the assessment rolls, and that the Assessor of the Parish of St. Charles and the Louisiana Tax Commission should be made a party to these proceedings.

XII

Petitioner further avers that protest was made in accordance with law to the proper authorities as to this assessment, but to no avail.

XIII

Petitioner further avers that it has been served with a notice for the payment of this tax on said illegal assessment amounting to the sum of $3,885.05, and that Leon C. Vial, Sheriff and ex-officio Tax Collector for the Parish of St. Charles, will seize and sell its oils within the Parish of St. Charles for the payment of said tax, unless restrained and prohibited from so doing by this Honorable Court.

XIX

Petitioner further avers that it has no adequate remedy at law save a Writ of Injunction.

Wherefore, the accompanying affidavit being considered and upon security to be furnished in the amount with the sureties and with the conditions required by law, petitioner prays that a preliminary Writ of Injunction issue [fol. 4] herein restraining and prohibiting Leon C. Vial, Sheriff and Tax Collector of the Parish of St. Charles, and R. A. DeBroca, Assessor for the Parish of St. Charles, and the Louisiana Tax Commission, through its proper officer, from laying and levying against it the said illegal assessment, and restraining and prohibiting the said Leon C. Vial, Sheriff and Tax Collector for the Parish of St. Charles, from advertising, seizing or attempting to sell petitioner's property in his effort to collect said illegal tax. That said assessment and said tax be declared illegal, null and void; that the defendants be duly cited to appear and answer this petition, and that after due proceedings had there be judgment in favor of your petitioner and against said defendants declaring said assessment illegal, null and void and perpetuating the said Writ of Injunction, and for all costs and general relief.

(Signed) Moise & Hammond, Attorneys for Petitioner.

Affidavit

Before me the undersigned authority personally came and appeared J. V. Coone, who being duly sworn, deposes and says:

That he is Treasurer, of the Carson Petroleum Company; that said Company is the petitioner named in the foregoing petition, and that all the allegations of facts contained herein are true and correct, and that a Writ of Injunction is necessary to protect said Company in the premises.

(Signed) J. V. Koon.

Sworn to and subscribed before me this 10th day of April, 1924 at Chicago, Illinois. (Signed) John K. Murphy, Notary Public.

Order

Let a Rule Nisi issue herein and let defendants be and they are hereby ordered to show cause on the 29th day of May 1924, at 10 o'clock, why a preliminary Writ of Injunction should not issue in this cause as prayed for and according to law.

Parish of St. Charles, May 15th, 1924.

(Signed) Prentice E. Edrington, Judge.

Service Accepted. Harry P. Sneed, Counsel for Defts.

Service accepted 5/10/24. (Signed) Leon C. Vial, Sheriff.

[fols. 5 & 6] In District Court of St. Charles Parish

[Title omitted]

Order for Injunction—Filed June 17, 1924

Let preliminary injunction issue herein upon plaintiff furnishing bond according to law in the sum of Six thousand ($6,000.00) Dollars.

Parish of St. John the Baptiste, La., June 16th, 1924.

(Signed) Prentice E. Edrington, Judge.

No Objections of preliminary injunction. (Signed) Harry P. Sneed, Atty. for Deft.

Service accepted June 17/24. (Signed) Leon C. Vial, Sheriff.

[File endorsement omitted.]

[fol. 7] In District Court of St. Charles Parish

[Title omitted]

Answer—Filed Dec. 7, 1926

To the Honorables the Judges of the Twenty-fourth Judicial District Court, Parish of St. Charles, State of Louisiana:

Now comes, Leon C. Vial, Sheriff and Tax Collector for the Parish of St. Charles, State of Louisiana, R. A. Dubroca, the Assessor for the Parish, and the Louisiana Tax Commission, herein made defendants, and to the petition herein filed, answering say:

I

They admit the allegations of paragraph 1.

II

They are without sufficient information to enable them to admit or deny the allegations contained in paragraph 2 of said petition, they, consequently, deny same pro forma, and call for such proof as this Honorable Court may deem to be relevant to the issue herein.

III

The allegations of paragraph 3 are admitted.

IV

That your petitioners of their own knowledge are unable to admit or deny the allegations contained in paragraphs 4, 5, 6, and 7, of plaintiff's petition, except that they deny that the containers employed by plaintiff are mere facilities furnished for the purpose of carrying on the business of exportation of oil.

V

On information and belief they charge that the establishment of plaintiff company in the Parish of St. Rose is a storage place, or entreport, where oils are collected for the convenience and profit of the said plaintiff, and that the oil herein assessed is oil held in storage at said point.

[fol. 8]

VI

The allegations of paragraph 7 are denied.

VII

The allegations of paragraph 8 are admitted, except that it is denied that the oil on which an assessment has been levied is oil in transit.

VIII

Defendants admit a refusal of plaintiff to pay the tax assessed against it, but denies that the reason for such refusal by the plaintiff is valid.

IX

The allegations of paragraph 10 are denies.

X

The allegations of paragraph 11 are denied.

XI

The allegations of paragraph 12 are admitted.

XII

The allegations of paragraph 13 are admitted.

Wherefore, defendants pray that the preliminary injunction issued herein be racalled; that there be judgment dismissing plaintiff's suit, and ordering plaintiff to pay, in addition to the taxes and penalties herein involved, an attorney's fee of ten (10%) per cent. on the said taxes and penalties, as provided by law.

And for all costs and general relief.

(Signed) C. S. Lagarde, Frymire & Ramos, Harry P. Sneed, Attorneys for Defendants.

Duly sworn to by Leon C. Vial. Jurat omitted in printing.

[fol. 9] [File endorsement omitted.]

[fol. 10] [File endorsement omitted]

IN DISTRICT COURT OF ST. CHARLES PARISH

[Title omitted]

STATEMENT OF EVIDENCE—Filed Jan. 18, 1927

Appearing for the plaintiff, Harold A. Moise and John K. Murphy.

Appearing for the defendant, Harry Sneed, Frymore Ramos and Mr. Lagarde.

Honorable Robert Rivarde presiding.

TESTIMONY AND NOTES OF EVIDENCE FOR THE PLAINTIFF

Mr. H. E. BRANDLI, being first duly sworn for the plaintiff, answered the following questions from Mr. Murphy, direct examiner:

Q. Would you state your name to the Court?
A. H. E. Brandli.
Q. And your address, Mr. Brandli?
A. Chicago, Ill.
Q. I will now ask whether you are in any way connected with the Carson Petroleum Company?
A. Yes, I am Vice President and General Manager.
Q. How long have you been connected with the Carson Petroleum Company in that capacity?
A. Five years.
Q. What is the business of the Carson Petroleum Company?
A. Buying gasoline, kerosene and various petroleum products for shipment for export.
Q. Is the Carson Petroleum Company incorporated do you know, and in what State?
A. Yes they are, in the State of Delaware.
Q. I will ask if you know where the Petroleum Import & Export Corporation is located; to be more specific, in what State and town?
A. Yes, the Petroleum Import & Export Corporation is located in St. Rose, Parish of St. Charles, La.
Q. Now do you know whether the State of Louisiana, or the Port Authorities of New Orleans, or the Police Jury of the Parish of St. Charles, have provided the requisite and necessary facilities for the assembling and accumulation of cargoes of oils for export?
A. No, they have made no such provision.
[fol. 11] Q. Do you know whether the Petroleum Import & Export Corporation has established and constructed on the Mississippi River front at St. Rose, Parish of St. Charles, State of Louisiana, the necessary tanks and other equipment and facilities for assembling, loading and discharging of cargoes of oils for export?
A. Yes, the plant was built for that purpose.
Q. Do you know, Mr. Brandli, from your experience and your association with this exporting business, do you know

what period of time it takes to assemble a cargo of gasoline, kerosene or petroleum for export?

A. From forty-five to ninety days.

Q. Will you state to his Honor just exactly the routine of assembling a cargo of gasoline before it is delivered to the loading depot on river front?

A. Yes, first we secure orders for export shipments, then after securing the orders we purchase from the various refiners in the Mid-Continent Field, which comprises mostly the States of Kansas, Oklahoma and Texas where the various refiners are located. We buy this material, gasoline or kerosene and petroleum products from these refiners, ship it in tank cars to our plant at St. Rose, La., where the necessary amount is accumulated, a vessel taking from two million to three million gallons, and as soon as the material is accumulated and boats are available, the material is shipped for export.

Q. Is the shipment from the Field to the Boat ever in any way delayed or held up?

A. Oh yes, quite often it is delayed and often times some delay is experienced in getting material from the refiners. They do not always have the material on hand and cannot ship immediately and we often have to wait until they manufacture sufficient material.

Q. Is the contents of a cargo frequently purchased from a number of different refiners?

A. Yes, we purchase from practically all of the refiners in the Mid-Continent Field.

Q. Then as I understand, some is purchased in Kansas, Texas and Oklahoma, collecting it as quickly as you can; now what is the route of transporting or conveying same or does it come in different tanks to St. Rose?

A. It comes from various points in these three States and, of course, over railroad shipment in common carriers and tank cars. There is always some delay in transit and there are times in loading a vessel when we have to hold the vessel at our docks until the material actually arrives. During these times, of course, we are very much concerned as there is demurrage on boats of from $1,500.00 to $2,000.00 per day and naturally we make every effort to avoid any demurrage on this account and rush the refiners all possible.

Q. Will you state to his Honor how many tank cars of gasoline go to make up a cargo?

A. From three to five hundred for one cargo.

Q. Do you know how many cars are shipped to an ordinary freight train?

A. Twenty-five would be the minimum, I would say thirty cars.

[fol. 12] Q. Do you make it a point to get these train loads of tank cars down to the loading depot before your boat gets in?

A. Oh yes, we sell, for instance, a cargo taking three million gallons, while we may buy this material from say ten different refiners, say quarter of a million from one, half million from another, one hundred thousand gallons from another and so on, we buy same for shipment over a certain period and as fast as the refiners can ship. However, we have to provide for a ten per cent leeway on all cargoes.

Q. Please state exactly what you mean by lee-way.

A. Cargoes are generally sold with a ten per cent leeway. If you sell a two million gallon cargo with a ten per cent leeway, this gives the ship a leeway in loading the vessel. That means that the buyer can take either ten per cent more or ten per cent less than two million gallons, or he has a leeway of 400,000 gallons on a two million gallon cargo.

Q. These cargoes, without exception, are sold by you and purchased by foreign buyers before you order any material?

A. Yes, we have contracts for shipment over a year's period, six months period, or different periods. We buy and ship against these contracts. Just within the past ten days we have closed a contract for thirteen million gallons of material for shipment over the next six months for loading on certain vessels. Oft times a vessel loads and goes over and comes back and loads again.

Q. Will you state to his Honor the usual proviso as to the time of loading a vessel?

A. Cargoes are sold for loading within a given period. For instance, right now we would book a cargo for January or February loading, which means we would be required to load that cargo either tomorrow or the end of February. The buyer has leeway over a certain period. Whenever his

boat arrives at our plant we have to be ready to load. The boat is sometimes delayed by storms and other unforeseen conditions and as a result they have leeway over a certain period.

Q. Without exception or reservation, have you ever purchased any petroleum products, gasoline or oil of any description and shipped it to St. Rose before it was sold to some foreign shipper?

A. No, we always have contracts ahead, contracts which would more than cover any material we have on hand. On the contrary, we are generally oversold. Our plant is more or less always short of material.

Q. Do you ever have to hold up vessels or boats because of a lack of oil or gasoline at the plant?

A. Yes, that quite often occurs. We try to avoid that condition, but refiners like all other shippers are oft times delayed in making deliveries. We have placed orders with certain refiners and certain conditions arise and they cannot ship the material and we in turn have to wire another refiner to fill our shipment and so buy a rush shipment from another refiner.

Q. In the years of 1923, 1924, 1925 and this past year what was the status of all petroleum products, gasoline and kerosene at the St. Rose plant of the Petroleum Import & [fol. 13] Export Corporation, what was it there for?

A. For export contracts.

Q. What exact state was it in.

A. It was material in transit for export. It was sold and being accumulated at the plant.

(This question was objected to by Mr. Sneed.)

Q. Did you ever do anything, or the Carson Petroleum Company do anything to retard shipment abroad?

A. No.

Q. Will you state to his Honor the occasion for any delay, or any temporary stoppage at the loading tanks at St. Rose.

A. The only delay we ever have is due to the delay in the arrival of a vessel or due to a delay in the arrival of material at St. Rose for the vessel.

Q. Was there ever any material shipped to the Carson Petroleum Company for any storage at St. Rose?

A. No.

Q. Of any kind, petroleum, gasoline or oil?

A. None.

Q. Do you know what the facilities and equipment at St. Rose are primarily?

A. The plant was built and the equipment was provided for the accumulation of gasoline, kerosene and various petroleum products for export shipment.

Q. Mr. Brandli, did the Carson Petroleum Company in 1923, 1924, or 1926 ever sell, or did it ever ship, any of the petroleum products located in your tanks at the St. Rose plant, within the State of Louisiana for domestic trade?

A. No.

Q. Did it ever?

A. No, we never have.

Q. Did you ever sell any petroleum products of any kind or description in the State of Louisiana at any time for domestic use?

A. No.

Q. Is there any petroleum products, or has there ever been any petroleum products, accumulated by the Carson Petroleum Company for any warehouse purposes at St. Rose?

A. No, for no storage purposes.

Q. Was there ever any delay in shipments because of or on account of Carson Petroleum Company other than the delay in the arrival of ocean carriers as you state?

A. No.

Q. Do you know of your own knowledge whether the Louisiana Tax Commission or the Assessors of the Parish of St. Charles placed an assessment on the equipment furnished for the purpose of shipping oil by the Petroleum [fol. 14] Import & Export Corporation?

A. Yes.

Q. Have you got the tax receipts with you for the past several years?

A. Yes, we have.

(Produced tax receipts to Judge.)

Q. Mr. Brandli, will you state to his Honor whether the gasoline that you ship to St. Rose, La., to the plant of the

Petroleum Import & Export Corp'n. is what is known as domestic gasoline, or state to his Honor fully what the quality of it is

A. No, the gasoline shipped to St. Rose for export shipment is familiarly called export gasoline. It is a much better grade of gasoline than is used in this country for domestic consumption. In other words, the foreign buyers use a much better grade of gasoline in their cars than we do in this country. The gasoline used in this country for cars is generally 58/60 Navy gasoline, 58/60 in gravity, and Navy gasoline is U. S. Navy specifications, in recent years called U. S. Motor specifications. The greater portion of gasoline exported is a better grade of gasoline, 64/66 in gravity with a 375 end point, as compared to Navy gasoline with a 437 end point. This 64/66 gasoline with a 375 end point is really to gasoline what cream is to milk. It has a very high gravity and low end point, the lower the end point the better the gasoline and nearly all of the foreign buyers, France, England, etc., use this better grade because their cars will not operate satisfactorily on the low grade of gasoline as our cars will in this country, difference in the type of cars. We export some Navy gasoline as is used in this country, but very little.

Cross-examination by Mr. Harry Sneed, attorney for defendant:

Q. Mr. Brandli, is there any difference in your method of doing business at the time this assessment was made and the present time.

A. No.

Q. You say you are buying oils in tank cars in the Mid-Continent Field wherever you can and routing them all to St. Rose and emptying the contents into your tanks awaiting the arrival of ships?

A. Yes, sir.

Q. To whom are these tank cars consigned?

A. To the Petroleum Import & Export Corporation.

Q. Is that a subsidiary of the Carson Petroleum Company?

A. It is.

Q. In whose name is the title of the oil?

(Question objected to by Mr. Murphy.)

A. Carson Petroleum Company.

[fol. 15] Q. Does any of this oil pass through St. Rose on a through bill of lading to a foreign carrier?

A. No, it does not.

Q. Then the Carson Petroleum Company are owners of this material from the time it leaves the field until it is loaded on a foreign carrier.

A. Well, I will say this that all of the material purchased is billed by the railroad on an export rate, which takes a lower rate than the domestic rate into St. Rose. It arrives under our shipping instructions given the railroad to be shipped for export.

Q. The bill of lading simply reads from point where the tank cars are loaded to your plant at St. Rose for export?

A. Yes, otherwise it would take the domestic rate.

Q. These tank cars are brought to St. Rose and emptied until you accumulate enough to make shipment abroad. In other words, you accumulated petroleum products, purchased wherever you can buy most profitably, bring to St. Rose and accumulate until you can dispose of by shipping abroad?

A. No, we cannot wait and accumulate it, if we sell a cargo today, we buy against this sale or against this cargo and we buy the material in time to arrive at St. Rose for that specific shipment. In other words, we have to have it there in time. If we sell a cargo now for March shipment, we buy the material now to have it in time for this shipment.

Q. I believe I understood you to say that you were generally oversold and always busy accumulating material?

A. Yes, sir.

Q. Now, Mr. Brandli, does any of this material pass thru St. Rose on a thru bill of lading from points where the tank cars are loaded to its destination abroad?

A. None at all.

Q. Does the Carson Petroleum Company carry insurance on that oil at St. Rose?

A. Yes, sir.

Q. To whom is the loss payable in the event of destruction?

A. The Carson Petroleum Company.

Q. Then it is the Carson Petroleum Company's petroleum and petroleum products until it actually starts abroad on its foreign journey?

A. Yes, sir.

Q. Then, Mr. Brandli, what is the difference between this plant at St. Rose and other similar plants where goods are accumulated with the intention of the owner to ship?

A. I do not get you.

Q. To explain this, I will have to go a little bit further. Here is the purpose: the courts have decided, or it is my con-ention that the courts will decide, that when a gathering point is operated for the purpose of accumulating goods which are intended to be exported, that those goods are not [fol. 16] relieved from local taxation. Now can you state what there is in the business operations of the Carson Petroleum Company at St. Rose to distinguish them from any other concern which accumulates goods with the ultimate intention of exporting them?

A. Just as you contend, the Mid-Continent Refiners have recently tried to organize an Export Company whereby they would accumulate material during a certain period and when the price got down to where they did not want to sell to domestic users, they would export it and when prices got better would dispose of it for domestic use. Now that would be partly a warehouse company proposition whereby they would accumulate material and ship it when prices got right. We, ourselves, do not do this; we contract with our foreign buyers for material and have boats designated to lift this material and we ship the material immediately on arrival of these boats. We ship up to fifty tankers a year and our material is really in transit all the way thru. It is bought and just as soon as the boat arrives it is loaded on, while they are now trying to organize a Company to accumulate material to sell when prices are right.

Q. Has there ever been any particular tank car pass thru St. Rose on a thru bill of lading for the consumer?

A. I cannot say 100% on that, because we may have shipped on a thru bill of lading, but I do not think we ever have.

Q. Then it is not the custom of the Company?

A. No.

(Mr. Murphy spoke: You could not do it, it could not be done. You Mr. Sneed represent the Sinclair Refining Company and know that it would be impossible to do such a thing, that is to ship from the Mid-Continent Field to Europe.)

A. I believe there is a possibility that this could be done, but I think it would be a very stupendous method and it has never been done in the history of the United States to my knowledge. If you shipped into Mexico this could very easily be done as no unloading or reloading would be necessary.

Q. The whole situation at St. Rose is that this is an assembling point where you assemble the oil which you ultimately intend to ship as soon as you can get a boat to ship it in; the title of the oil is in the name of the Carson Petroleum Company when it reaches St. Rose; insurance is carried in the name of the Carson Petroleum Company, to whom loss is payable in the event of destruction, and it is therefore the property of the Carson Petroleum Company until a vessel arrives and charter and bill of lading is made out to some foreign concern?

A. The material is released by us and bill of lading signed by the Captain of the vessel.

Q. When commonly speaking about merely assembling material, may I call your attention to the fact as to the intent purpose of the plant and inquire whether ordinary tanks would be fitting or adequate for the purpose of unloading and loading to the boats?

A. Well, while ordinary tanks would, of course, hold the material, I refer to tanks with a cone top as ordinary tanks, such as they use in the fields where they accumulate raw [fol. 17] material and crude petroleum our tanks or rather the majority of them, are water top tanks with 6" of water on top to avoid evaporation losses. As I said before this 64/66 material is very light material and the evaporation losses are quite heavy and we do everything we can to avoid evaporation and this water top tank avoids excessive heat.

Q. Mr. Brandli, the facilities afforded by the Petroleum Import & Export Corporation are for the protection also for the accumulation and conservation of petroleum products as they are loaded into ships, so that it is not merely an assembling plant, but it is a necessary accommodation

in loading foreign merchandise. In other words, you could not hold a boat without demurrage while you were accumulating a cargo, and, therefore, you would have to call it an assembling plant. There is no process of loading 400 or 500 tank cars on to a boat without having some unloading or pumping facilities, is that right?

A. Yes, cars could be shipped down to the plant, say 400 cars of gasoline could be shipped down here and you could pump from tank cars right to the vessel, but everything would have to work 100% with the refiners, 100% with the railroads and our plant would have to be able to accommodate 400 cars on our tracks. In that event you would have demurrage on the cars and demurrage on the vessel, but it could be done. However, the evaporation and additional expense would be enormous.

Q. Is there any appreciable difference in the temporary waiting for a ship in the unloading into these preserving tanks?

A. Do you mean as to evaporation loss?

Q. Yes, is there any appreciable difference in time material stands temporarily should it not work out so that your tank car shipments meet your tankers?

A. Yes, the evaporation is greater, but we have to have them there ahead of time because you cannot judge the exact arrival date of vessels and our foreign buyers charter tankers for loading anytime within thirty or forty-five days. For instance if we sell a cargo for February, we say February or March lifting, then they can load the material anytime from the first of February to the last day of March.

Q. Mr. Brandli, you have stated to his Honor that every gallon shipped by the Carson Petroleum Company to the plant at St. Rose is intended for export and practically in transit to vessels, now then will you state to his Honor whether or not it is a fact that all of the merchandise and petroleum products you have referred to were actually and immediately shipped for export over seas?

A. Yes.

Q. Was there ever any storage of any kind or any stoppage of any material shipped to St. Rose?

A. Not unless a boat was not available, having been delayed in some way.

Q. So that any delay or standing of any quantity of gasoline whatever was due solely to the waiting for a boat.

A. Yes sir.

[fol. 18] Q. Will you state to his Honor the foreign countries that you shipped to in 1923, 1924, 1925 and 1926 under contracts?

A. During that period we shipped cargoes to nearly all the foreign countries, France, England, Belgium, Spain, China, Japan, Australia and South America.

Q. Have you here in court available for his Honor the cargoes shipped in 1923, 1924, 1925 and 1926.

A. We have copies of the orders, or our instructions to St. Rose to load for export shipment.

Q. As a matter of fact then during the process of accumulation that oil is in tanks at St. Rose?

A. Yes sir.

(Mr. Moise, attorney for plaintiff:)

Q. Regarding this oil which you receive as you say from the various States, after it reaches St. Rose for export, do you make any change whatever in the character of your produce?

A. No, it is shipped as received.

Q. Now the method which you pursue in the exportation of oil, is naturally limited by the available facilities for shipment which you have.

A. Yes.

Q. The method which you pursue in the shipment of oil, it being in liquid form, is the method which in the judgment of your Company promotes the safety of the oil in transit?

A. Yes sir.

By Mr. Murphy:

Q. On purchasing material for export on foreign orders, when you purchase the required quantities in Kansas, Oklahoma and Texas and it is turned over to a common carrier at those points, do you make a habit of notifying your foreign customers that the merchandise is en route?

(Question objected to by Mr. Sneed and withdrawn by Mr. Murphy.)

Second witness, Mr. M. K. THOMEN, was tendered by the plaintiff as a witness, thereupon the defendant made the following admission:

It is admitted that the present witness both on direct and cross-examination will testify in the same manner as did the preceding witness, Mr. H. E. Brandli, and therefore will not be asked to testify.

Thereafter the witness was duly sworn by the Minute Clerk and answered the following question, asked by Mr. Murphy:

Q. Mr. Thomen was there ever any delay upon the arrival of tank cars containing gasoline and petroleum products after arriving at St. Rose until they were placed aboard tankers as cargoes to foreign purchasers?

A. No, never.

[fol. 19] Assessment-roll for the Parish of St. Charles, 1923

Page 85.
Wards 3 and 5 Non-residents.

No. of assessment	Name and address of taxpayer	Description of property	Actual value of all other property as fixed by the La. Tax Comsion for all assessment purposes	Total assessed value of all of the foregoing property for State purposes at 100% actual value
141.....	Carson Petroleum Co., of Delaware, 208 La Salle St., Chicago.....	Mdse. at St. Rose (Oil).....	$200,000.00	$200,000.00

Total assessed value of all of the foregoing property for local purposes at —% actual value	Total State tax, 5½ mills	Parish tax, 4 mills	Levee, 5½ mills	School, 8	School, 1	School, 1½	Road, 1	Total
$170,000.00	$1,050.00	$680.00	$1,050	$510	170	$255.00	170	$3,885.00

I hereby certify the above to be a true and correct copy from assessment roll on file in my office showing assessment of the Carson Petroleum Corporation for the year 1923.
Parish of St. Charles, Jan. 4th, 1927.
I. F. Baudouin, Clerk of Court and Recorder. (Seal of the Clerk of the Parish of St. Charles, Louisiana.)

[fols. 20-24] In District Court of St. Charles Parish

[Title omitted]

Judgment—Filed Jan. 18, 1927

In this case the law and the evidence being so clearly in favor of the Plaintiff and against the defendants:

It is ordered, adjudged and decreed that the assessment and taxes levied and sought to be collected by the defendants herein, be and the same is hereby declared to be illegal, null and void, and

It is further ordered, adjudged and decreed, that the preliminary injunction heretofore issued in this case on the 16th day of June, 1924, be and the same is hereby made perpetual and accordingly the Tax Assessor of the Parish of St. Charles, and the Louisiana Tax Commission of the State of Louisiana, and the Sheriff of the Parish of St. Charles, be and they are hereby prohibited, restrained and enjoined from levying any tax upon the property of plaintiff or from advertising, seizing, selling or attempting to sell any of the property belonging to the plaintiff herein.

Judgment rendered, read and signed in open court of this 18th day of January, 1927.

(Signed) L. Robert Rivarde, Judge.

[File endorsement omitted.]

[fol. 25] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 26] In Supreme Court of Louisiana

His Honor, the Chief Justice, pronounced the opinion and judgment of the Court in the following cases:

No. 28543

Carson Petroleum Company

vs.

Leon C. Vial, Tax Collector, et al.

Final Judgment—May 7, 1928.

The judgment appealed from is annulled; the writ of injunction which was issued herein is dissolved; the plain-

tiff's demand is rejected and its suit is dismissed at its cost, and it is ordered, adjudged and decreed that the tax collector shall collect from the plaintiff, Carson Petroleum Company, as part of the costs hereof, the tax collector's attorney's fee of ten per cent. on the aggregate amount of the taxes which he was sought to be restrained from collecting, and the penalties imposed by law.

[fol. 27] IN SUPREME COURT OF LOUISIANA

[Title omitted]

OPINION—May 7, 1928

O'NIELL, C. J.:

This is an action to abate the levying of taxes on a quantity of oil in a storage tank at St. Rose, in the Parish of St. Charles, Louisiana. The taxes complained of are the ad valorem taxes levied by the state and the parish, generally, on all property subject to such taxation. There is no charge of discrimination against the property of the defendant in that respect. The property assessed was a quantity of oil belonging to the plaintiff, in storage tanks belonging to the Petroleum Import & Export Corporation, near the Mississippi River, being the estimated average quantity of oil on hand, and was assessed at $200,000. It was not charged in the plaintiff's petition that the estimate of either the quantity or the value of the oil assessed was excessive. The only complaint was that the taxing of the oil was deemed an interference with interstate and foreign commerce, and therefore violative of the 3rd clause of the 8th section and the 5th clause of the 9th section and the 2nd clause of the 10th section of Article I of the Constitution of the United States. The district court gave judgment in favor of the plaintiff, annulling the assessment and abating the tax, on the ground that the oil which was assessed was in transit, or on its way, from another state to a foreign country, and was halted only temporarily at St. Rose, and had not a situs in the Parish of St. Charles or State of Louisiana. [fol. 28] The defendants, who are the tax collector, the assessor, and the Louisiana Tax Commission, have appealed from the decision.

There is no dispute about the facts of the case, so far as they are pertinent to the question at issue. The plaintiff, Carson Petroleum Company, is a Delaware corporation, engaged in buying and selling oils, and particularly in exporting the same. The Petroleum Import & Export Corporation is a subsidiary of the Carson Petroleum Company, and owns and operates the system of tanks and pumping equipment for receiving the contents of the railroad tank cars of oil into the tanks owned by the Petroleum Import & Export Corporation and afterwards loading it into ships for export. The Port of New Orleans has no facility or equipment for assembling or receiving from railroad tank cars cargo-s of oil and loading it aboard ships for export. The tanks and equipment at St. Rose, a few miles above New Orleans, were constructed for that purpose. No oil is sold at St. Rose except what is exported. The only business conducted there is the unloading of oil from railroad tank cars into the storage tanks and the loading of the oil from the storage tanks aboard the tankers for shipment to England, France, and other foreign ports. The oil is bought by the Carson Petroleum Company from the refiners in the Mid-Continent Field, comprising Kansas, Oklahoma and Texas, and is shipped to St. Rose, Louisiana, in railroad tank cars consigned to the Carson Petroleum Company. The shipments are not on through bills of lading, but on an export rate, which is lower than the domestic rate. The oil is a higher grade of gasoline than is used in this country generally, and is made especially for export, because the automobiles in England, France, and other foreign countries require a higher grade of gasoline than that which is used in this country. The Carson Petroleum Company takes orders for cargo-s of oil from the foreign buyers, who charter the vessels to transport the oil from St. Rose to the foreign ports. The company always has orders on hand in excess of the quantity of oil at St. Rose, and buys the oil in the Mid-Continent [fol. 29] Field for the purpose of filling orders already received from the foreign buyers. The oil in each railroad tank car, however, is not segregated or assigned or destined to any particular cargo or shipment abroad, but is pumped into the large storage tanks, having the capacity of many tank cars, and is held in the tanks until a ship arrives, or

until a sufficient quantity of oil is accumulated to make up a cargo. A ship carries from two to three million gallons; hence it takes 300 to 500 railroad tank cars, or 10 to 16 trains of tank cars, to make up a cargo of oil. The buyers are allowed a ten per cent leeway on the quantity of oil bought for each shipment; which, as we understand, means that, if the capacity of the ship is either more or less than the quantity of oil contracted for, the buyers can demand a delivery of the ships capacity, at the contract price of 'the oil per gallon, provided the quantity shall be not more than ten per cent above or below the quantity contracted for. A delivery of the oil thus sold is made by loading the oil aboard the ship chartered by the buyer. Until the oil is thus loaded aboard a ship it belongs to the Carson Petroleum Company and is insured in the name of the company, loss payable to the company. There are times when an accumulation of oil in the tanks is awaiting the arrival of a ship, and at other times a ship is awaiting the accumulation of a sufficient quantity of oil to make up a cargo. In order to save demurrage on ships, which amounts to $1,500 or $2,000 per day on a ship, the Carson Company endeavors to have a sufficient quantity of oil on hand at St. Rose to fill each order promptly on arrival of the ship. On account of the demurrage charges on tank cars, as well as on steamships, it would be impracticable to carry on the export oil business by any other method than by storing the oil in large storage tanks as the train loads of oil arrive, and shipping from the accumulation when the ships arrive. The oil is shipped from the storage tanks in the same condition in which it was received from the tank cars, without being treated in any way. The oil is never kept [fol. 30] on hand at St. Rose any longer than is necessary. The quantity on hand is always awaiting either the arrival of a ship or the accumulation of a sufficient quantity to load a ship.

The plaintiff, appellee, contends that the interstate and foreign shipment of the oil, from the refineries in the Mid-Continent Field, into and across the State of Louisiana, and across the sea to the foreign ports, is a continuous interstate and foreign shipment, notwithstanding the stoppage and storage of the oil at St. Rose, where it had to await either the arrival of a ship or the accumulation of

a sufficient quantity of oil to load a ship. The defendants appellants, contend that there are two separate shipments of the oil,—the interstate shipment, which ends when the tank cars arrive and are unloaded at St. Rose, and the foreign shipment, which begins when the oil is loaded aboard a ship destined for a foreign port. Hence the defendants, appellants, contend that, while the oil is stored in the tanks at St. Rose, under the protection of the state and local government, it is subject to state and local taxation, notwithstanding it is intended and prepared for exportation.

The interstate and foreign commerce clause of the Federal Constitution does not exempt movable property from state or local taxation, if it is not discriminative, unless the property is in actual transit in interstate or foreign commerce; and the question of continuity of transit which will exempt property moving in interstate or foreign commerce, from state or local taxation, is to be determined by the various factors in the situation, among which are the intention of the owner, the control which he retains to change the destination, the agency or agencies by which the transit is affected, and the cause or occasion or purpose of the interruption during which the property is assessed for state or local taxation. Champlain Realty Co. v. Brattleboro, 260 U. S. 366, 43 Sup. Ct. Rep. 146, 67 L. Ed. 309, 25 A. L. R. 1195.

The mere intention of the owner to export the property, even when coupled with a preliminary shipment in prepara- [fol. 31] tion for exportation, does not constitute the beginning of an interstate or foreign shipment. To exempt the property from state or local taxation, it must have been shipped, or entered with a carrier for shipment, to another state or a foreign country, or started on a continuous route or journey beyond the state. Cone v. Errol, 116 U. S. 517, 29 L. Ed. 715, 6 Sup. Ct. 475; Diamond Match Co. v. Ontonagon, 188 U. S. 82, 47 L. Ed. 394, 23 Sup. Ct. Rep. 266; General Oil Co. v. Crain, 209 U. S. 211, 52 L. Ed. 754; 28 Sup. Ct. Rep. 475; Bacon v. Illinois, 227 U. S. 504, 57 L. Ed. 615, 33 Sup. Ct. Rep. 299; Champlain Realty Co. v. Brattleboro, 260 U. S. 366, 67 L. Ed. 309, 43

Sup. Ct. Rep. 146, 25 A. L. R. 1195; Rees-Scott Co. v. City of New Orleans, 124 La. 155, 49 So. 1012.

It is not possible to distinguish this case from General Oil Co. v. Crain, supra, in the application of the law to the facts of the case. The General Oil Company was a Tennessee Corporation, having its principal place of business in Memphis, and engaged in the business of manufacturing illuminating oils and selling them in other states into which they were shipped. The company's wells and refining plants were in Pennsylvania and Ohio, from which the oils were shipped into the states in which they were sold and used. On account of the tendency of the oils to leak and evaporate and to burst the containers in changes of temperature, it was necessary to ship the oils in railroad tank cars, to the several distributing points throughout the United States, at which the oil was put into barrels or other containers suitable in size for filling orders, which varied in amounts from one barrel upward. It was impracticable to maintain an equipment for the reception and distribution of the oil at every such point at which orders were filled. Memphis was one of such distributing points, to which the oils were shipped from Pennsylvania and Ohio in tank cars, and at which the oils were unloaded into tanks and put into barrels and other smaller vessels and forwarded to the company's customers in Arkansas, Louisiana, [fol. 32] and Mississippi, in which states the company had many regular customers, from whom it always had on hand unfilled orders for oil, to be delivered as soon as possible or convenient. The company conducted also a local business, selling and delivering oil to customers in Memphis, and maintained large tanks, of various sizes, for the several kinds of oils, to be put into barrels or other smaller vessels, to be sold locally or to fill the orders already received from the customers in Arkansas, Louisiana, and Mississippi. For many years, the company unloaded its oil from its tank cars into the large stationary tanks without attempting to segregate the oil which was sold or intended to be sold locally from that which was to be forwarded to the customers in Arkansas, Louisiana, and Mississippi; and the company paid an inspection fee or tax of 25 cents per barrel, levied by a statute of Tennessee, on all of the oils in the company's stationary tanks in Memphis, whether the oil was intended

for sale in Tennessee or in the other states mentioned. Being advised that the oil destined to be shipped and sold outside of the State of Tennessee would not be subject to the local inspection tax if kept separate from the oil sold or intended to be sold in Tennessee, the company inaugurated and maintained a system of segregating the oil that was to be shipped to the customers in Arkansas, Louisiana, and Mississippi, from that which was sold or intended to be sold in Tennessee. A stationary tank, marked plainly and conspicuously "Oil Already Sold in Arkansas, Louisiana, and Mississippi," was maintained, in which alone was kept the oil for which orders had been received from the customers in those states before the oil was shipped from the plants in Pennsylvania and Ohio especially to fill such orders. That oil was unloaded from the tank cars at Memphis into the stationary tank only for the purpose of putting it into the smaller vessels to meet the requirements of the orders which had been received from the customers in Arkansas, Louisiana, and Mississippi, before the oil was shipped from Pennsylvania or Ohio, and was kept separately, in the [fol. 33] tank marked "Oil Already Sold in Arkansas, Louisiana, and Mississippi," until put into the smaller vessels and forwarded to the customers in those states. Another stationary tank, marked plainly and conspicuously "Oil to be Sold in Arkansas, Louisiana, and Mississippi" was maintained, in which the oil to be sold in those states, but for which there were no orders received before the oil was shipped in the tank cars from the company's plants in Pennsylvania and Ohio, was kept separate and apart from all other oil until required for filling orders from the company's customers in those states, and was never sold except on receipt of such orders. Thereafter, the company invoked the commerce clause of the Constitution of the United States, contending that in so far as the inspection fee or tax was sought to be imposed upon the oil in the two tanks marked as we have said it was violative of the 3rd clause of the 8th section of article 1 of the Constitution giving the Congress the exclusive power to regulate commerce among the several states. The defendant filed a demurrer, attacking the jurisdiction of the court on the ground that the suit was one against the state, or against an officer acting by authority of the state. The chancery court overruled

the demurrer in so far as the oil in the tank marked "Oil Already Sold in Arkansas, Louisiana, and Mississippi" was concerned, and sustained it in so far as the oil in the tank marked "Oil to be Sold in Arkansas, Louisiana, and Mississippi" was concerned. On appeal, the supreme court of Tennessee decided that the suit was one against the state, and reversed the decree of the chancery court. The plaintiff sued out a writ of error, and the Supreme Court of the United States affirmed the judgment on the ground that "no constitutional right of the oil company was violated by the enforcement of the law" levying the tax. In the course of the opinion, Mr. Justice McKenna, for the court, after reviewing many like cases, including Coe v. Errol, supra, and Diamond Match Co. v. Ontonagon, supra, said:

[fol. 34] "Like comment is applicable to plaintiff in error and its oil. The company was doing business in the state, and its property was receiving the protection of the state. Its oil was not in movement through the state. It had reached the destination of its first shipment, and it was held there, not in necessary delay or accommodation to the means of transportation, as in State, Detnold, Prosecutor, v. Engle, supra, but for the business purposes and profit of the company. It was only there for distribution, it is said, to fulfill orders already received. But to do this required that the property be given a locality in the state beyond a mere halting in its transportation. It required storage there,—the maintenance of the means of storage; of putting it in and taking it from storage. The bill takes pains to allege this. 'Complainant shows that it is impossible, in the coal oil business, such as complainant carries on, to fill separately each of these small orders directly from the railroad tank cars, because of the great delay and expense in the way of freight charges incident to such a plan, and for the further reason that an extensive plant and apparatus is necessary in order to properly and conveniently unload and receive the oil from said tank cars, and it would be impracticable, if not impossible, to have such apparatus and machinery at every point to which complainant ships said oil.'

"This certainly describes a business,—describes a purpose for which the oil is taken from transportation, brought to rest in the state, and for which the protection of the

state is necessary,—a purpose outside of the mere transportation of the oil. The case, therefore, comes under the principle announced in American Steel & Wire Co. v. Speed, 192 U. S. 500, 48 L. Ed. 538, 24 Sup. Ct. Rep. 365.

"We have considered this case so far in view of the cases which involve the power of taxation. It may be that such power is more limited than the power to enact inspection laws. The difference, if any exists, is not necessary to observe. The cases based on the taxing power show the contentions of plaintiff in error are without merit; in other words, show that its oil was not property in interstate commerce."

The court considered and rejected, in the case just cited, every contention made in the argument of the oil company in the present case, to the effect that the unloading and storing of the oil in the stationary tanks was merely a necessary incident of the business and an unavoidable delay in the transportation of the oil beyond the state.

As to the method of assessing and taxing movable property that is temporarily halted and at rest, between its transportation within and its exportation from the state, it was said in Coe v. Errol, supra:

"But, granting all this, it may still be pertinently asked: How can property thus situated, to-wit: deposited or stored at the place of entrepot for future exportation, be taxed in [fol. 35] the regular way as part of the property of the state? The answer is plain. It can be taxed as all other property is taxed, in the place where it is found, if taxed or assessed for taxation in the usual manner in which such property is taxed, and not singled out to be assessed by itself in an unusual and exceptional manner because of its destination. If thus taxed, in the usual way that other similar property is taxed, and at the same rate and subject to like conditions and regulations, the tax is valid. In other words, the right to tax the property being founded on the hypothesis that it is still a part of the general mass of property in the state, it must be treated in all respects as other property of the same kind is treated.

"These conditions we understand to have been complied with in the present case. At all events there is no evidence to show that the taxes were not imposed in the regular and

ordinary way. As the presumption, so far as mode and manner are concerned, is always in favor of, and not against, official acts, the want of evidence to the *country* must be regarded as evidence in favor of the regularity of the assessment in this case."

The oil company, as appellee in this case, relies mainly upon the definitions given in cases involving, not the question of the right of a state to tax property claimed to be moving in interstate or foreign commerce, but the question as to whether the commerce itself—when claimed to be interstate or foreign commerce—is subject to state regulation or subject to Federal regulation. We refer particularly to Swift & Co. v. United States, 196 U. S. 375, 49 L. Ed. 518; Texas & New Orleans Railroad Co. v. Sabine Tram Co., 227 U. S. 111, 57 L. Ed. 442; and Railroad Commission of Louisiana v. Texas & Pacific Railway Co., 229 U. S. 336, 57 L. Ed. 1215. The Supreme Court of the United States, in defining "exports" and in determining when a shipment is in interstate or foreign commerce, has recognized or at least has intimated that the limitation on the power of the states to tax property when halted in an interstate or foreign shipment is not so strict as is the prohibition against any interference with the exclusive power of the Congress to regulate the interstate and foreign commerce itself. For example, in Swift & Co. v. United States, 196 U. S. 400, 49 L. Ed. 526, it is said:

"But we do not mean to imply that the rule which marks the point at which state taxation or regulation becomes permissible necessarily is beyond the scope of interference by Congress in cases where such interference is deemed neces-
[fols. 36-41] sary for the protection of commerce among the states. Nor do we mean to intimate that the statute under consideration is limited to that point. Beyond what we have said above, we leave those questions where we find them. They were touched upon in Northern Securities Co. v. United States, 193 U. S. 197, 48 L. Ed. 679, 24 Sup. Ct. Rep. 436."

Accordingly, if the state were attempting, in this instance, to regulate, or to impose a burden, such as a license tax, upon the business itself which is being conducted by the Carson Petroleum Company, or by the Petroleum Im-

port & Export Corporation, at St. Rose, the case would present a different question—to which the rulings cited by counsel for the Carson Petroleum Company would be appropo.

According to the rulings in Coe v. Errol, Diamond Match Co. v. Ontonagon, General Oil Co. v. Crain, and Bacon v. Illinois, supra, as distinguished from and approved in Champlain Realty Co. v. Brattleboro, supra, the judgment appealed from must be reversed, and the demand of the plaintiff rejected and its suit dismissed.

The tax collector claims his attorney's fee of 10 per cent upon the aggregate amount of the taxes and penalties to be collected, for defending this suit in which the tax collector is sought to be restrained from collecting the tax. The claim is well founded. Act 170 of 1898, sec. 56, p. 373; Globe Lumber Co. v. Clement, 110 La. 438, 34 So. 595.

The judgment appealed from is annulled; the writ of injunction which was issued herein is dissolved; the plaintiff's demand is rejected and its suit is dismissed at its cost; and it is ordered, adjudged and decreed that the tax collector shall collect from the plaintiff, Carson Petroleum Company, as part of the costs hereof, the tax collector's attorney's fee of ten per cent. on the aggregate amount of the taxes which he was sought to be restrained from collecting, and the penalties imposed by law.

[fols. 42-45] IN SUPREME COURT OF LOUISIANA

[Title omitted]

ORDER DENYING REHEARING—June 4, 1928

By the Court:

It is ordered that the rehearing applied for in this case be refused.

[fol. 46] Petition for Writ of Error—Original

IN SUPREME COURT OF LOUISIANA

No. 28543

[Title omitted]

PETITION FOR ALLOWANCE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES OF AMERICA AND FOR SUPERSEDEAS—Filed June 28, 1928.

To the Honorable Charles A. O'Neill, Chief Justice Supreme Court of the State of Louisiana:

And now comes the Carson Petroleum Company, a Delaware corporation, plaintiff and appellee herein, and respectfully represents:

I

That on or about the tenth day of May, 1924, an action was commenced in the Twenty-Fourth Judicial District Court, Parish of St. Charles, State of Louisiana, by the Carson Petroleum Company against Leon C. Vial, Sheriff and Tax Collector of the Parish of St. Charles, and R. A. DeBroca, Assessor for the Parish of St. Charles, and the Louisiana Tax Commission to restrain them and each of them from laying and levying against the plaintiff an assessment upon merchandise oil, and restraining and prohibiting the said Leon C. Vial, Sheriff and Tax Collector for the Parish of St. Charles from advertising, seizing and attempting to sell plaintiff's property in his effort to collect said illegal tax in the amount of $3,885.05.

II

That the said tax purported to be assessed pursuant to the laws of the State of Louisiana in force at the time of said assessment.

[fol. 47]

III

That on or about June 17th, 1924 a preliminary injunction issued herein out of said Twenty-fourth Judicial District Court for the Parish of St. Charles, and the plaintiff thereupon filed its bond in the sum of $6,000.00.

IV

That the defendants thereafter filed answer to the said petition in which, among other things, the said defendants charged that the establishment of the plaintiff company at St. Rose, in the Parish of St. Charles, is a storage place, or entrepot, where oils are collected for the convenience and profit of said plaintiff, and that the oil herein assessed is oil held in storage at said plant.

V

That thereafter the said case proceeded to trial on the merits before the Honorable L. Robert Rivarde, one of the judges of the Twenty-Fourth Judicial District Court for the Parish of St. Charles, and on the eighteenth day of January, 1927 a judgment was entered in said cause in part as follows:

"In this case the law and the evidence being so clearly in favor of the plaintiff and against the defendants:

"It is ordered, adjudged and decreed that the assessment and taxes levied and sought to be collected by the defendants herein, be and the same is hereby declared to be illegal null and void, and

"It is further ordered, adjudged and decreed, that the preliminary injunction heretofore issued in this case on the 16th day of June 1924 be and the same is hereby made perpetual and accordingly the Tax Assessor of the Parish of St. Charles, and the Louisiana Tax Commission of the State of Louisiana, and the Sheriff of the Parish of St. Charles, be and they are hereby prohibited, restrained and enjoined from levying any tax upon the property of Plaintiff or from advertising, seizing, selling or attempting to sell any of the property belonging to the Plaintiff herein."

VI

That thereafter and on February 5th, 1927 an appeal was allowed to this Court by the Honorable L. Robert Rivarde, and this Court entered, on May 7th, 1928 a decree by which the judgment appealed from was annulled; writ of injunction which was issued herein was dissolved; the plaintiff's

demand was rejected and suit was dismissed at its cost; and it was ordered, adjudged and decreed that the Tax Collector shall collect from the plaintiff, Carson Petroleum [fol. 48] Company, and as part of the costs hereof, the Tax Collector's attorney's fee and ten per cent on the aggregate amount of the taxes which he was sought to be restrained from collecting and the penalties imposed by law.

VII

That thereafter and on May 21st, 1928 a petition for rehearing was filed in this Court, together with a brief in support thereof by the plaintiff, and on June 4th, 1928 the said petition for rehearing was denied without reasons.

VIII

The claim of the plaintiff and appellee is that the taxes so levied and taxed are in violation of and repugnant to Article 1, Section 8, Clause 3 of the Constitution of the United States of America which provides as follows:

"The Congress shall have power * * * to regulate commerce with foreign nations, and among the several States, and with the Indian tribes."

And in that such tax burdens and interferes with foreign commerce and is in violation of and repugnant to Article 1, Section 9, Clause 5 of the Constitution of the United States of America which provides:

"No Tax or Duty shall be laid on Articles exported from any State."

And in that such tax burdens and interferes with foreign commerce and is in violation of and repugnant to that part of Article 1, Section 10, Clause 2 of the Constitution of the United States of America which provides:

"No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws: * * *"

The decree complained of violates the rule announced by the Supreme Court of the United States in Coe vs. Errol, 116 U. S. 517 where that Court, in determining when personal property wasn't taxable by the State, said——

"that such goods do not cease to be a part of the general mass of property in the state, subject, as such, to its jurisdiction, and to taxation in the usual way, until they have been shipped, or entered with a common carrier for transportation, to another state, or have been started upon such transportation in a continuous route or journey."

Further, the decree complained of violates the purport of the decision of the Supreme Court of the United States in Champlain Realty Company against Town of Brattleboro, 260 U. S. 366, in which the Court, in holding that certain logs were not taxable by the State, said:

"The boom at the mouth of the West River did not constitute an entrepot or depot for the gathering of logs pre-[fol. 49] paratory for the final journey. It was only a safety appliance in the course of the journey. It was a harbor of refuge from danger to a shipment on its way. It was not used by the owner for any beneficial purpose of his own except to facilitate the safe delivery of the wood at Hinsdale on their final journey already begun. The logs were not detained to be classified, measured, counted, or in any way dealt with by the owner for his benefit, except to save them from destruction in the course of their journey that, but for natural causes, over which he could exercise no control, would have been actually continuous."

Further, the decree complained of violates the principal announced by the Supreme Court of the United States in Hughes Bros. Timber Company vs. Minnesota, 272 U. S. 469 in which the Court, in holding that certain pulp wood was not taxable by the State, said:

"The change in the method of transportation by floating to carriage on a vessel did not affect the continuity of the interstate passage, if such a passage was intended by the parties and had begun, any more than did shipment by local railroad bills of lading from a point in a state to a port of

the same state, for shipment by vessel to a foreign port, prevent its being interstate or foreign commerce."

IX

The specific question presented is whether the continuity of the interstate and foreign transportation of the merchandise oil from the Mid-Continent fields in Arkansas, Oklahoma and Texas to the European destination is so affected as to make the merchandise oil taxable in the State of Louisiana by the stoppage at the harbor of St. Rose where the oil is removed from tank cars to stationary tanks and thence to steamer in view of the fact that no other method of change from land to water transportation is provided and, in view of the further fact, that the plaintiff and its subsidiary conduct no business of any kind at St. Rose except to effect the change in the method of transportation from land to water.

X

The plaintiff contends that the Supreme Court of the State of Louisiana, by its decree entered May 7th, 1928, has disregarded and refused to follow the fundamental principles announced by the Supreme Court of the United States; and that the tax levied is in violation of Article 1, Section 8, Clause 3; Article 1, Section 9, Clause 5, and Article 1, Section 10, Clause 2 of the Constitution of the United States of America.

Wherefore petitioner further avers that in the aforesaid judgment and proceedings certain errors were committed to the prejudice of petitioner, all of which will more fully appear from the assignment of errors which is filed herewith:

Wherefore petitioner prays that an appeal be allowed from the Supreme Court of the State of Louisiana to the Supreme Court of the United States of America for the correction of the errors complained of, and that a transcript [fol. 50] of the record, proceedings and papers in this cause, together with this petition and assignment of errors, duly authenticated by the Clerk of the Supreme Court of the State of Louisiana, may be sent to the Supreme Court of the United States as directed by law.

Petitioner further prays for citation and that an order of supersedeas be entered herein pending the final decision in this cause, and that the amount of security may be fixed by the order allowing the said appeal.

And, as in duty bound, petitioner will ever pray.

Harold A. Moise, John K. Murphy, Geo. M. Burditt, Attorneys for Petitioner.

[File endorsement omitted.]

[fol. 51] IN SUPREME COURT OF LOUISIANA

[Title omitted]

ASSIGNMENT OF ERRORS—Filed June 28, 1928

And now comes Carson Petroleum Company, petitioner and plaintiff in error, by its undersigned counsel, and in connection with its petition for a writ of error, shows that in the record of proceedings and in the rendering of the judgment and decision of the Supreme Court of the State of Louisiana in the above entitled cause, manifest error has intervened to the prejudice of petitioner and plaintiff in error in this, to-wit:

I

The Court erred in annulling the judgment herein obtained by plaintiff and appellee from the Twenty-Fourth Judicial District Court for the Parish of St. Charles, State of Louisiana, wherein it was ordered, adjudged and decreed that the assessment and taxes levied and sought to be collected by defendants herein were declared to be illegal, null and void. And where it was further ordered, adjudged and decreed that the tax assessor of the Parish of St. Charles and the Louisiana Tax Commission of the State of Louisiana and the Sheriff of the Parish of St. Charles be and they are hereby prohibited, restrained and enjoined from levying any tax upon the property of plaintiff or from advertising, seizing, selling or attempting to sell any of the property belonging to the plaintiff herein.

II

The Court erred in annulling and dissolving the permanent writ of injunction obtained by the plaintiff and appellee in the Twenty-Fourth Judicial District Court for the [fol. 52] Parish of St. Charles, State of Louisiana, restraining the Tax Assessor of the Parish of St. Charles and the Louisiana Tax Commission of the State of Louisiana and the Sheriff of the Parish of St. Charles from levying any tax upon the property of plaintiff, or from advertising, seizing, selling or attempting to sell any of the property belonging to the plaintiff herein.

III

The Court erred in ordering, adjudging and decreeing that the Tax Collector for the Parish of St. Charles collect from the plaintiff and appellee, Carson Petroleum Company, the aggregate amount of taxes which said Tax Collector was restrained from collecting, together with the Tax Collector's attorneys fee of ten per cent of the aggregate amount of such taxes, and together with costs of suit.

IV

The Court erred in deciding and finding that the merchandise oil, which had been assessed by the Tax Collector for the Parish of St. Charles, was subject to a tax under the laws of the State of Louisiana.

V

The Court erred in not finding and deciding that the said merchandise oil was not subject to tax under said statute.

VI

The Court erred in finding and deciding that the merchandise oil assessed by the Tax Collector for the Parish of St. Charles was not in transit in foreign commerce.

VII

The Court erred in not finding and deciding that the merchandise oil taxed by the Assessor for the Parish of St.

Charles was property in transit in foreign commerce and as such not subject to tax under the laws of the State of Louisiana.

VIII

The Court erred in finding and deciding that the merchandise oil assessed by the Assessor for the Parish of St. Charles was not exempt from said taxation under and pursuant to the provisions of Article 1, Section 8, Clause 3, Article 1, Section 9, Clause 5, and Article 1, Section 10, Clause 2 of the Constitution of the United States of America.

IX

The Court erred in not finding and deciding that the merchandise oil assessed by the Assessor of the Parish of St. Charles was exempt from taxation under and pursuant to the said provisions of the Constitution of the United States of America.

[fol. 53]

X

The Court erred in misapprehending and misconstruing the decisions of the United States Supreme Court in the case of Coe vs. Errol, 116 U. S. 517; Champlain Realty Co. vs. Brattleboro, 260 U. S. 366; Hughes Bros. Timber Company vs. Minnesota, 272 U. S. 469.

XI

The Court erred in finding and deciding that it is not possible to distinguish this case from General Oil Company vs. Crane, 209 U. S. 211, in that, in the instant case, the plaintiff did not conduct any business of any kind, did not make any grading, distribution or segregation of merchandise oil, and did not make any sales either domestic or foreign at the Port of St. Rose, all of the merchandise oil shipped through said port having been purchased by the plaintiff from its Chicago and New York offices in the Mid-Continent Fields to fill orders already having been taken from European consumers, whereas in the General Oil Company case, the Oil Company, as is pointed out by Mr. Chief Justice Taft in Champlain Realty Company against Brattleboro, 260 U. S. 366—

"had its principal place of business in Memphis, Tennessee, for the manufacture and sale of illuminating oils in interstate commerce. It imported oil from other states and put it into a tank, appropriately marked for distribution in smaller vessels to fill orders for oil already sold in Arkansas, Louisiana and Mississippi. The Court held that the first shipment had ended; that its storage at Memphis for division and distribution to various points was for the business purposes and profits of the company. The Court continued:

" 'It was only there for distribution, it is said to fulfill orders already received. But to do this required that the property be given a locality in the state beyond a mere halting in its transportation' (p. 231). The tank at Memphis thus became a depot in its oil business for preparing the oil for another interstate journey."

By reason whereof petitioner and plaintiff in error prays that said judgment of the Supreme Court of the State of Louisiana should be reversed and that judgment be rendered in favor of petitioner and plaintiff in error.

Carson Petroleum Company, by Harold A. Moise, John K. Murphy, Geo. M. Burditt, Attorneys.

[File endorsement omitted.]

[fol. 54] ORDER GRANTING WRIT OF ERROR

No. 28543

IN SUPREME COURT OF LOUISIANA

[Title omitted]

ORDER ALLOWING APPEAL—Filed June 28, 1928

On reading of the petition of Carson Petroleum Company for an order allowing appeal and the assignment of errors, and upon due consideration of the record in this cause:

It is ordered that an appeal with supersedeas be allowed from the Supreme Court of the United States to the Su-

preme Court of the State of Louisiana, as prayed for in said petition, and that said appeal and citation thereon, be issued, served, and returned to the Supreme Court of the United States, in accordance with law, upon the condition that the said petitioner and plaintiff in error, Carson Petroleum Company, do give security in the sum of Seventy-five hundred Dollars ($7,500.00); that the said plaintiff in error shall prosecute the said appeal to effect, and, if plaintiff in error fails to make good its plea, shall answer to defendant in error for all costs and damages that may be adjudged and decreed on account of said appeal, the said bond to be approved by me.

In witness whereof, I have hereto set my hand this 28th day of June, 1928.

Charles H. O'Neill, Chief Justice of the Supreme Court of the State of Louisiana. (Seal, Supreme Court of the State of Louisiana.

[File endorsement omitted.]

[fols. 55 & 56] Bond on writ of error for $7,500.00, approved and filed June 28, 1928, omitted in printing.

[fol. 57] IN SUPREME COURT OF LOUISIANA

WRIT OF ERROR, SHOWING ACCEPTANCE OF SERVICE AND WAIVER OF CITATIONS BY COUNSEL FOR DEFENDANTS IN ERROR—Filed June 30, 1928

UNITED STATES OF AMERICA, ss:

The President of the United States of America to the Honorable Judges of the Supreme Court of the State of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of the State of Louisiana, before you, or some of you, being the highest court of law or equity of the

said State in which a decision could be had in the said suit between Carson Petroleum Company against Leon C. Vail, Sheriff and Tax Collector of the Parish of St. Charles; R. A. De Broca, Assessor for the Parish of St. Charles, and The Louisiana Tax Commission, bearing the No. 28543 upon the docket of the said Supreme Court of the State of Louisiana, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of the clause of the Constitution, [fols. 58-60] or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said Carson Petroleum Company, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, within 30 days from the date hereof, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable William Howard Taft, Chief Justice of the Supreme Court of the United States, the 28 day

of June, in the year of our Lord one thousand nine hundred and twenty-eight.

H. J. Carter, Clerk of the District Court of the United States for the Eastern District of Louisiana. (Seal.)

Allowed by Charles A. O'Niell, Chief Justice Supreme Court Louisiana. (Seal.)

[File endorsement omitted.]

Acceptance of Service

Service accepted. Issuance of writ of error and citation waived.

Harry P. Sneed, Attorney for Leon C. Vial, Sheriff and Tax Collector for the Parish of St. Charles; R. A. De Broca, Assessor for the Parish of St. Charles; Louisiana Tax Commission.

[fol. 61] Return to Writ of Error omitted in printing.

[fol. 62] In Supreme Court of the United States

Statement of Points to be Relied Upon and Designation of Parts of Record to be Printed—Filed July 25, 1928

The plaintiff in error will rely upon the following points:

Point I

The levying of an assessment by the taxing authorities of the State of Louisiana on merchandise oil in actual transit from the Mid-Continent fields in Arkansas, Oklahoma and Texas to European destination is in violation of the provisions of:

Article 1, Section 8, Clause 3;

Article 1, Section 9, Clause 5; and

Article 1, Section 10, Clause 2 of the Constitution of the United States of America.

Point II

The transfer of merchandise oil from railroad tank cars to tank steamers through the medium of stationary tanks constructed by a subsidiary of the plaintiff in error at the harbor of St. Rose, Louisiana, was not an interruption of the continuity of the interstate and foreg-ing shipment.

Point III

Merchandise oil in process of transfer from railroad to water transportation at the harbor of St. Rose, Louisiana, is not subject to taxation by the State of Louisiana.

Point IV

The decree of the Supreme Court of the State of Louisiana vacating the injunction issued against the defendants and reversing the decree in favor of the plaintiff by the Trial Court should be reversed and a decree entered in favor of the plaintiff.

The plaintiff in error hereby designates the following parts of the record as necessary for the consideration of the foregoing points:

1. The petition of Carson Petroleum Company for a writ of injunction filed in the Twenty-fourth Judicial District Court for the Parish of St. Charles, May 10, 1924.

[fol. 63] 2. The injunction order entered in the Twenty-fourth Judicial District Court for the Parish of St. Charles, June 17, 1924.

3. The answer of Leon C. Vial, Sheriff and Tax Collector for the Parish of St. Charles, State of Louisiana, R. A. De Broca, the Assessor for the Parish, and the Louisiana Tax Commission, filed in the Twenty-fourth Judicial District Court for the Parish of St. Charles, December 7th, 1926.

4. The testimony and notes of evidence filed in the Twenty-fourth Judicial District Court for the Parish of St. Charles, January 18, 1927.

5. The portion of the assessment roll for the Parish of St. Charles showing the assessment against the Carson Petroleum Company filed in the Twenty-fourth Judicial

District Court for the Parish of St. Charles, January 18, 1927.

6. The judgment entered in the Twenty-fourth Judicial District Court for the Parish of St. Charles, January 18, 1927.

7. The certificate of the Clerk of the Twenty-fourth Judicial District Court dated March 18, 1928.

8. The opinion and decree filed and entered by the Supreme Court of Louisiana May 7, 1928.

9. The order entered by the Supreme Court of Louisiana June 4, 1928 denying the motion of plaintiff for a rehearing.

10. The petition of Carson Petroleum Company filed in the Supreme Court of Louisiana June 28, 1928 for the allowance of an appeal to the Supreme Court of the United States of America.

11. The assignment of error filed with said petition.

12. The order of Chief Justice John A. O'Neill allowing an appeal to the Supreme Court of the United States of America.

13. The bond filed by Carson Petroleum Company in the Supreme Court of Louisiana, June 28, 1928.

14. The waiver of service of citation filed by the defendants in error June —, 1928.

15. The certificate of the Clerk of the Supreme Court of Louisiana dated the — day of July, 1928.

William E. Leahy, Harold A. Morse, John K. Murphy, Geo. M. Bendett, Attorneys for Plaintiff in Error.

Service of a copy of the foregoing statement of points and designation of parts of the record is admitted this 30 [fol. 64] day of June, 1928, and we do hereby expressly waive the right to designate any further parts of the record to be printed.

Harry P. Sneed, Attorney for Defendants in Error.

[fols. 65 & 66] [File endorsement omitted.]

Endorsed on cover: File No. 33,615. Louisiana Supreme Court. Term No. 306. Carson Petroleum Company, plaintiff in error and appellant, vs. Leon C. Vial, sheriff and tax collector of the Parish of St. Charles; R. A. De Broca, assessor for the Parish of St. Charles, et al. Filed July 25th, 1928. File No. 33,615.

(3317)

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed November 26, 1928

The petition herein for a writ of certiorari to the Supreme Court of the State of Louisiana is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(4820)

FILE COPY

Office Supreme Court, U. S.
FILED
AUG 20 1928
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of The United States

OCTOBER TERM, A. D. 1928.

NO. 306

CARSON PETROLEUM COMPANY,
Plaintiff in Error,
v.
LEON C. VIAL, Sheriff, et al.,
Defendants in Error.

Appeal from the Supreme Court of Louisiana

STATEMENT OF BASIS OF JURISDICTION OF SUPREME COURT TO REVIEW ON APPEAL THE JUDGMENT BELOW.

WILLIAM E. LEAHY,
Solicitor for Plaintiff in Error.

JOHN K. MURPHY,
HARRY A. NEWBY,
HAROLD A. MOISE,
GEORGE M. BURDITT,
Of Counsel.

IN THE

Supreme Court of The United States

OCTOBER TERM, A. D. 1928.

NO.....

CARSON PETROLEUM COMPANY,
Paintiff in Error,
v.
LEON C. VIAL, Sheriff, et al.,
Defendants in Error.

Appeal from the Supreme Court of Louisiana

STATEMENT OF BASIS OF JURISDICTION OF SUPREME COURT TO REVIEW ON APPEAL THE JUDGMENT BELOW.

(a) There was drawn in question in this suit by the plaintiff in error the validity of the statutes of the State of Louisiana under which taxing authorities of the Parish of St. Charles levied an assessment upon merchandise oil actually in transit from the Mid-Continent Fields in Arkansas, Oklahoma and Texas to the European destination on the ground of being repugnant to the following provisions of the Constitution of the United States of America:

Article I, Section 8, Clause 3:

"The Congress shall have power * * * to regulate commerce with foreign nations, and among the several States, and with the Indian tribes."

Article I, Section 9, Clause 5:

"No Tax or Duty shall be laid on Articles exported from any State."

Article I, Section 10, Clause 2:

"No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws; and the Net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Control of the Congress."

The decision of the Supreme Court of the State of Louisiana, being the highest court of that state in which a decision in the suit could be had, reversing the trial Court, was in favor of the validity of the assessment. The case is within the jurisdiction of this Court by the express language of Section 237 of the Judicial Code.

(b) The Supreme Court of the State of Louisiana on May 7, 1928, entered a decree by which a decree of the Twenty-fourth Judicial District Court, Parish of St. Charles, State of Louisiana, was annulled, the writ of injunction theretofore issued dissolved, the demand of the plaintiff in error was rejected and the suit was dismissed at its costs (Rec. folio 26).

On May 21, 1928, a petition for a rehearing was filed in the said Supreme Court of the State of Louisiana,

and on June 4, 1928, the said petition for rehearing was denied without reasons (Rec. folio 42).

On June 28, 1928, a petition for the allowance of an appeal to this Honorable Court was duly presented to the Honorable Charles A. O'Neill, Chief Justice of the Supreme Court of the State of Louisiana, and on that day an order was made allowing said appeal (Rec. folio 54).

On July 25, 1928, a complete record from the Supreme Court of the State of Louisiana was duly filed with the Clerk of this Honorable Court, upon which day this cause was docketed herein (Rec. folio 54).

(c) The Carson Petroleum Company (a Delaware corporation), the plaintiff in error, filed its petition in the court of original jurisdiction, alleging, among other things, that it is engaged in selling, exporting, and otherwise distributing oils; that the Petroleum Import & Export Corporation, Inc., (a subsidiary corporation), had established and constructed necessary tanks and other equipment and facilities for the loading and discharging of cargoes of oils for exports to foreign countries on the property owned by it on the river front at St. Rose, Parish of St. Charles, State of Louisiana; that all oil shipped to St. Rose had been previously sold by the petitioner to foreign purchasers before the arrival at St. Rose, and was shipped by rail from the various states in the Union in tank cars to St. Rose and there pumped, through the facilities furnished by the said Petroleum Import & Export Corporation, Inc., into tank steamers, on their arrival, for water shipment to foreign countries.

That the Louisiana Tax Commission and the Assessor for the Parish of St. Charles have placed an

assessment on the oil in transit, or said to be on hand in the company's tanks, in the following language:

"Merchandise at St. Rose, oil—$200,000.00."

That the petitioner refused to pay the tax based on said assessment for the reason that the oils so taxed were in transit from other states in the Union to foreign countries and the tax was, and is, therefore, a tax and burden on interstate and foreign commerce and repugnant to the provisions of the Constitution of the United States and the Laws of the State of Louisiana (Rec. folio 2).

The decision of the Supreme Court of Louisiana, from which this appeal is prosecuted, contains the following:

> "The only complaint was that the assessment of the oil for taxes was deemed an interference with interstate and foreign commerce and was therefore violative of the third clause of the eighth section and the fifth clause of the ninth section, and second clause of the tenth section of Article I of the Constitution of the United States.
>
> "The plaintiff, appellee, contends that the interstate and foreign shipment of the oil, from the refineries in the Mid-Continent Field, into and across the State of Louisiana and across the sea to the foreign ports, was a continuous interstate and foreign shipment, notwithstanding its stoppage and storage at St. Rose, where it had to await either the arrival of a ship or the accumulation of a sufficient quantity of oil to load a ship.
>
> "The interstate and foreign commerce clause of the Federal Constitution does not exempt movable property from state or local taxation, if it is not discriminative, unless the property is in actual transit in interstate or foreign commerce.

"According to the rulings in * * * the judgment appealed from must be reversed and the demand of the plaintiff rejected and its suit dismissed (Rec. folio 36).

(d) The jurisdiction of this Court is sustained by, and has been exercised in *Champlain Realty Company v. Brattleboro, 260 U. S. 366; Hughes Bros. Timber Company v. Minnesota, 272 U. S. 469; Coe v. Errol, 116 U. S. 517; General Oil Company v. Crain, 209 U. S. 211.*

We, therefore, respectfully submit that this Honorable Court has jurisdiction of the subject matter and of the parties hereto, and that the above entitled cause should be placed upon the docket of this Court for hearing in due course.

Respectfully submitted,

WILLIAM E. LEAHY,
Solicitor for Plaintiff in Error.

JOHN K. MURPHY,
HARRY A. NEWBY,
HAROLD A. MOISE,
GEORGE M. BURDITT,
Of Counsel.

FILE COPY

No. 306

FILED
OCT 29 192
CHARLES ELMORE CR
CL

Supreme Court of the United States

October Term, A. D. 1928.

CARSON PETROLEUM COMPANY,

Petitioner,

vs.

LEON C. VAIL, Sheriff and Tax Collector of the Parish of St. Charles; R. A. DeBroca, Assessor for the Parish of St. Charles, et al.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA.

WILLIAM E. LEAHY,
Counsel for Petitioner.

JOHN K. MURPHY,
HARRY A. NEWBY,
HAROLD A. MOISE,
GEO. M. BURDITT,
Of Counsel.

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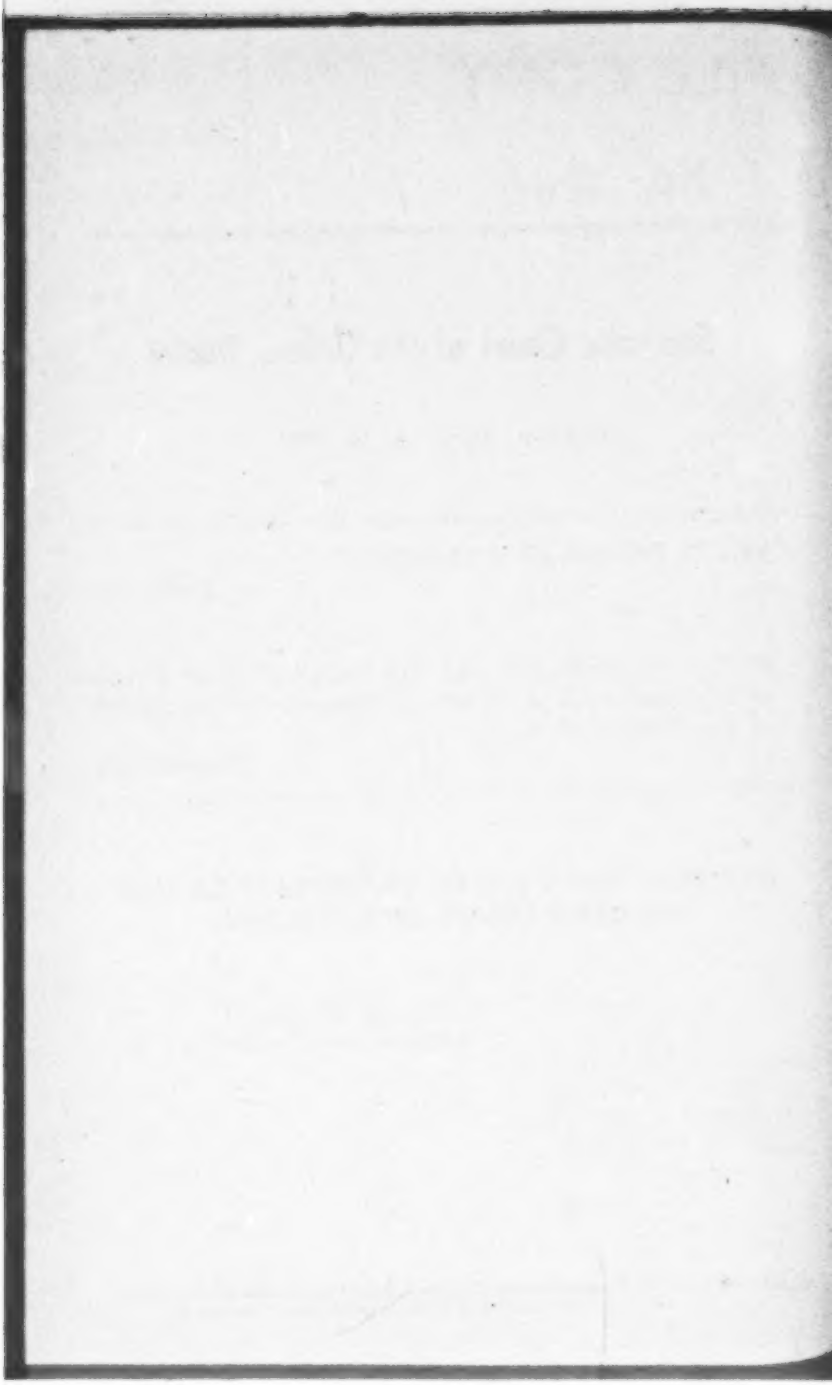

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Supreme Court of the United States

October Term, A. D. 1928.

CARSON PETROLEUM COMPANY,

Petitioner,

vs.

LEON C. VAIL, Sheriff and Tax Collector of the Parish of St. Charles; R. A. DeBroca, Assessor for the Parish of St. Charles, et al.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner hereby respectfully applies for a writ of certiorari addressed to the Supreme Court of Louisiana directing it to certify to this Honorable Court for review and determination the record in a certain cause, No. 28543, entitled *Carson Petroleum Company, appellee, v. Leon C. Vial, et al., appellant.*

By its judgment therein rendered on May 7, 1928, the said Supreme Court of Louisiana reversed a judgment in favor of the petitioner rendered on January 18, 1927, by

the Twenty-fourth Judicial District Court, Parish of St. Charles, State of Louisiana.

By an order entered in said Supreme Court of Louisiana on June 28, 1928, an appeal, with supersedeas, was allowed to this Honorable Court, and on July 25, 1928, a certified transcript of the record was filed in this Court, the record printed and thereafter a statement of the basis of jurisdiction was filed and the cause given No. 306.

By an order entered in this Court on October 15, 1928, the said appeal was dismissed for lack of jurisdiction with leave to file a brief supporting an application for certiorari within fifteen days, ten days for opposing counsel to reply.

The question presented is whether the continuity of the interstate and foreign transportation by the petitioner of merchandise oil from the Mid-Continent Fields in Kansas, Oklahoma and Texas to the European destination was so affected as to make the merchandise oil taxable in the State of Louisiana by the temporary stoppage at the harbor of St. Rose, where the merchandise oil was removed from tank cars to stationary tanks and thence to tank steamers for transportation abroad, in view of the facts:

(a) That no other method of change from land to water transportation was provided;

(b) That the petitioner and its subsidiary, the owner of the stationary tanks, conducted no business of any kind at St. Rose, except to effect the change in the method of transportation from land to water.

The suit brought by the petitioner sought an injunction restraining the laying and levying of an assessment

against merchandise oil in the stationary tanks at St. Rose and restraining the collection of said illegal tax.

The Twenty-fourth Judicial District Court, saying, in the judgment, "the law and the evidence being so clearly in favor of the plaintiff and against the defendants", held the assessment and taxes levied and sought to be collected illegal, null and void (R. 21).

The Supreme Court of Louisiana held that the continuity of the interstate and foreign transportation was interrupted to such an extent that the merchandise oil was subject to taxation by the State of Louisiana.

The petitioner challenges the ruling sustaining the tax on the merchandise oil in the tanks at St. Rose and takes the position that the merchandise oil was in continuous interstate and foreign transportation and as such, under the provisions of the Constitution of the United States, exempt from taxation by the State of Louisiana.

GROUNDS FOR APPLICATION.

The petitioner asks for this writ upon the following grounds:

FIRST: The laying and levying of an assessment against the merchandise oil at St. Rose under the authority of the General Revenue Law of Louisiana, Act 109 of 1921, entitled

> "To provide an annual revenue for the State of Louisiana by the levying of annual taxes upon all property not exempted from taxation; fixing the rates; and setting forth the purposes for which said levy is made; and prescribing the method of assessing and collecting the same; and enforcing the same thereof."

was repugnant to the following provisions of the Constitution of the United States of America.

Article I, Section 8, Clause 3:

> "The Congress shall have power * * * to regulate commerce with foreign nations, and among the several States, and with the Indian tribes."

Article I, Section 9, Clause 5:

> "No Tax or Duty shall be laid on Articles exported from any State."

Article I, Section 10, Clause 2:

> "No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws; and the Net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Control of the Congress."

SECOND: The decision of the Supreme Court of Louisiana is not in accord with applicable decisions of this Court in, among others:

(a) *Hughes Bros. Timber Co. v. Minnesota, 272 U. S. 469,* a tax case, in which this Court held, with respect to timber wood cut at various places in Minnesota from which it was hauled to the Swamp River and piled upon the ice and river banks and from there floated, when the ice broke, to the Pigeon River booms and then shipped by a vessel to Michigan, that the change in the method of transportation by floating to carriage on a vessel did not affect the continuity of interstate passage.

(b) *Champlain Realty Co. v. Brattleboro, 260 U. S. 366,* also a tax case, in which this Court held that pulp wood, floated from one state to another and held in one river because the high water made it unsafe to let the

logs enter the second river at the time of their arrival at the junction of the two rivers, was not subject to state taxation for the reason that the continuity of the interstate trip was not broken, the interruptions being only to promote the safe or convenient transit.

THIRD: The decision of the Supreme Court of Louisiana is not in accord with applicable decisions of other state courts in, among others:

(a) *State v. Engle, 34 N. J. L. 423,* in which the Court held that coal mined in Pennsylvania and sent by railroad cars to Elizabethport, New Jersey, to be thence shipped by water to points outside of the State, was not taxable during the time it remained on the dock at Elizabethport for change in the method of transportation.

(b) *State v. Carrigan, 39 N. J. L. 35,* in which the Court held that coal mined in Pennsylvania transported by rail to tide water at Port Johnson, New Jersey, and there deposited on the dock for re-shipment to points in other states, was coal in the course of transit and as such not taxable.

FOURTH: The decision involved is one of importance affecting the export trade in the United States which is in the public interest to have decided by this Honorable Court.

Hamilton-Brown Shoe Co. v. Wolf Bros. & Co., 240 U. S. 251;
Magnum v. Coty, 262 U. S. 159.

A brief statement of the facts will disclose the error of the Supreme Court of Louisiana in holding that the merchandise oil was not in continuous interstate and foreign transit as defined by this Honorable Court, and therefore, subject to taxation by the state.

BRIEF STATEMENT OF FACTS.

The state authorities of Louisiana for the year 1923 assessed merchandise oil of the petitioner at St. Rose in the sum of $200,000.00 (R. 20).

The business of petitioner is buying gasolene, kerosene and various petroleum products for shipment for export (R. 8). In the conduct of that business the first step is the taking of an order from a foreign buyer. The petitioner then goes into the Mid-Continent Field in Kansas, Oklahoma and Texas (R. 9) and makes purchases from various refineries of a gasolene manufactured especially for export and of a much higher gravity than is used in the domestic trade (R. 13). The product is then shipped by railroad to St. Rose, Louisiana, under a bill of lading reading for export and on the lower freight rate provided for export merchandise (R. 14).

Neither the State of Louisiana, the Port Authorities of New Orleans nor the Police Jury of the Parish of St. Charles have provided the requisite and necessary facilities for handling the oil for export (R. 8). The Petroleum Import and Export Corporation has established and constructed on the Mississippi River at St. Rose necessary tanks and other equipment (R. 8).

The merchandise oil, upon arrival at St. Rose by rail, is discharged into the tanks owned by petitioner's subsidiary and there reloaded into a tank steamer as soon as the vessel is available and shipped for export (R. 9). A single vessel cargo requires from three to five hundred tank cars (R. 10). There is no delay or standing of any quantity of gasolene at St. Rose except solely in waiting

for a boat (R. 18). This method is a necessary accommodation in loading foreign merchandise (R. 16).

The petitioner never ships to St. Rose before the merchandise is actually sold to a foreign buyer (R. 10); it has never made a sale in Louisiana (R. 12), and there is no change in the character of the merchandise at St. Rose (R. 18). All of the gasolene at St. Rose was in transit (R. 11).

No evidence of any kind was offered by the respondents.

BRIEF DISCUSSION OF GROUNDS FOR THIS APPLICATION.

FIRST: The provisions of the Constitution of the United States, to which we have referred, clearly prohibit the States from laying any tax on articles exported except such as may be necessary for executing the state inspection laws.

The title of the General Revenue Law of Louisiana, under which this tax was assessed, does not include the exception contained in the Constitution. The assessment roll shows that the tax was divided for State, Parish, Levee, School and Road purposes (R. 20). It follows, therefore, that if the merchandise oil was in interstate and foreign commerce, then the levying of the tax was in violation of the Federal Constitution and for that reason void.

The uncontradicted evidence shows that the petitioner, first having sold all of the taxed merchandise to foreign buyers, purchased a grade of gasolene manufactured especially for European consumption and that it was shipped

by rail from the Mid-Continent Fields to the plant at St. Rose where it was placed in stationary tanks of the petitioner's subsidiary and then loaded upon tank steamers and continued on its journey to the European destination. The only stoppage at St. Rose was while sufficient gasolene for a cargo was being collected and until a vessel was available for the ocean transportation. It was handled at the point where the overland transportation stopped and the water transportation started, in the only available method for its safe or convenient transit.

The principle announced by this Court in *Hughes Bros. Timber Co. v. Minnesota, 272 U. S. 469,* is exactly analogous to the case at bar. In that case the journey of the logs was made by floating in the Swamp and Pigeon Rivers to the Pigeon River Boom where they were held until they could be loaded upon vessels to continue the journey from one state to another. This Court held that such interruption at the boom did not affect the continuity of the interstate passage, saying at p. 474:

> "The change in the method of transportation by floating to carriage on a vessel did not affect the continuity of the interstate passage, if such passage was intended by the parties and had begun, any more than did shipment by local railroad bills of lading from a point in this state to a port of the same state, for shipment by vessel to a foreign port, prevent its being interstate or foreign commerce."

This Court, in *Champlain Realty Co. v. Brattleboro, 266 U. S. 366,* also held:

> "If the interruptions are only to promote the safe or convenient transit then the continuity of the interstate trip is not broken."

In attempting to apply the holding in the *Brattleboro case*, the Supreme Court of Louisiana overlooked the holding of this Court as to what constitutes continuous passage, and by so doing rendered a decision squarely in conflict with the holdings of this Court.

The Supreme Court of Louisiana primarily based its decision upon *General Oil Company v. Crain, 209 U. S. 211* (R. 26), but, in applying that decision to the instant case, assumed the facts upon which the *Crain case* was decided to be identical with the facts in the present case and lost sight of the following clearly distinguishing features:

(a) In the *Crain case* the oil was imported to Memphis, Tennessee, from other states, and put into a tank for distribution in smaller vessels in other states. On that state of facts this Court held that the first shipment had ended and its stoppage at Memphis for division and distribution was for the business purposes and profit of the company, the tank at Memphis thus becoming a depot in its oil business for preparing the oil for another interstate journey. In the instant case the tanks at St. Rose were not for preparing the oil for another interstate journey, but were merely an implement through which the oil passed in its change from land to water transportation in the journey which started in the Mid-Continent Fields and ended only when the oil, in the exact form in which it had started, reached the foreign shores. In the cited case, therefore, there was a breaking up and distribution to various points. In the instant case there was no breaking up, but a mere passage from tank cars to tank steamers interrupted only so long as was necessary to obtain an available vessel.

(b) Also, in the *Crain case*, the company was doing a local business. No such business was carried on at St. Rose by the petitioner.

The decision of the Supreme Court of Louisiana is, therefore, not in accord with the holding of this Court upon which it purports to be founded.

The Supreme Court of Louisiana entirely overlooked the numerous decisions of this Court squarely holding that a shipment by local railroad bill of lading from a point in a state to a port of the state for shipment by vessel to a foreign port do not prevent its being interstate or foreign commerce, yet in all of those cases there was the necessary delay at the point where the method of transportation changed.

Southern Pacific Terminal Co. v. Interstate Commerce Commission, 219 U. S. 498;

Railroad Commission v. Worthington, 225 U. S. 101;

R. G. Spalding & Bros. v. Edwards, 262 U. S. 66.

We respectfully submit that whether the merchandise sought to be taxed is logs which are started on their interstate journey by floating in the water and held at a point along the way because the water in the second river is so high that they cannot safely be turned loose to its fury; whether the merchandise be logs which make the first leg of their journey by floating in a river and are there held to be loaded upon a vessel to continue the interstate journey; whether the merchandise be coal shipped from one state to another by rail and discharged upon a dock to await the arrival of a vessel for transportation to another state *(State v. Engle, 34 N. J. L.; State v. Carrigan, 39 N. J. L. 35)*; or whether the merchandise be gasolene

shipped by rail from one state to another where the gasolene is held to be placed upon a vessel to continue the journey to a foreign destination, makes no difference in the right of the state where the property is temporarily halted in its interstate and foreign journey to place a general tax upon the merchandise. The right to tax is not affected by the fact that logs may remain in the water or that coal may lie upon an open wharf. So, also, the right of the state to tax should not be affected by the fact that that gasolene is a highly volatile substance and must be closely confined. In each case there must be some provision for the safe and convenient transportation of the merchandise. That is what was provided by the petitioner at St. Rose.

The decisions of this Court to which we have made reference are clear that the merchandise is not taxable by the state, provided the interruption is only to promote the safe and convenient transit. The decision of the Supreme Court of Louisiana does not properly apply those decisions of this Court to this case and is in conflict with those decisions.

With no other facilities provided; with no method of transferring the gasolene directly from the tank cars to tank steamers; with the merchandise shipped solely for export and upon the lower export freight rate; with the great quantity of gasolene required to fill a tank steamer; with no change in the character of the gasolene at the point of transfer, and with no local dealing, the interruption in transit was only that absolutely necessary in the transportation from the Mid-Continent to the European destination. The continuous interstate and foreign journey was not thereby broken and local taxation remained prohibited by the Federal Constitution.

As was said by this Court in the case of *Southern Pacific Company v. Arizona, 249 U. S. 472,* the question whether a shipment is interstate commerce is a question of fact and we submit that the facts in the case at bar show conclusively that the petitioner's business at St. Rose is strictly interstate and foreign business.

The Supreme Court of Louisiana has erroneously held that the oil in the tanks at St. Rose was not in continuous transit in interstate and foreign commerce. That ruling is contrary to the facts established by the evidence presented to the trial Court (R. 11) and conflicts with every decision of this Court rendered in a case involving comparable facts.

Your petitioner pleads that the judgment of the Supreme Court of Louisiana holding that the tax was properly assessed is erroneous and that this Honorable Court should require the case to be certified to it for its review and determination.

Wherefore, your petitioner respectfully prays that a writ of certiorari may be issued out of and under the seal of this Court directed to the Supreme Court of the State of Louisiana commanding said Court to certify and send to this Court on a day certain to be therein designated, a full and complete transcript of the records and all proceedings in the Supreme Court of Louisiana in said case, styled *Carson Petroleum Company, appellee, v. Leon C. Vial, Sheriff and Tax Collector of the Parish of St. Charles, et al., appellants, No. 28543,* to the end that the said case may be reviewed and determined by this Honorable Court as provided in the Judicial Code, Section 237, and that this Honorable Court reverse the judgment of

the Supreme Court of Louisiana, and that your petitioner may have such other and further relief or remedy in the premises as to this Court may seem appropriate and in conformity with said Judicial Code, and that the judgment of the Twenty-fourth Judicial District Court, Parish of St. Charles, State of Louisiana, in said case, be affirmed by this Honorable Court.

And your petitioner will ever pray.

WILLIAM E. LEAHY,
Counsel for Petitioner.

JOHN K. MURPHY,
HARRY A. NEWBY,
HAROLD A. MOISE,
GEO. M. BURDITT,
Of Counsel.

State of Illinois,
County of Cook—ss.

John K. Murphy, being duly sworn, says that he is one of the counsel for the petitioner, Carson Petroleum Company; that he has had charge of this case for the petitioner from the inception thereof; that he assisted in the preparation of the foregoing petition and knows the contents thereof, and that the allegations thereof are true as he verily believes.

John K. Murphy.

Subscribed and sworn to before me by John K. Murphy, this 24th day of October, A. D. 1928.

Bernadette Butler,
Notary Public, Cook County, Illinois.

(Seal)
My commission expires December 6, 1930.

AFFIDAVIT OF SERVICE.

State of Illinois,
County of Cook—ss.

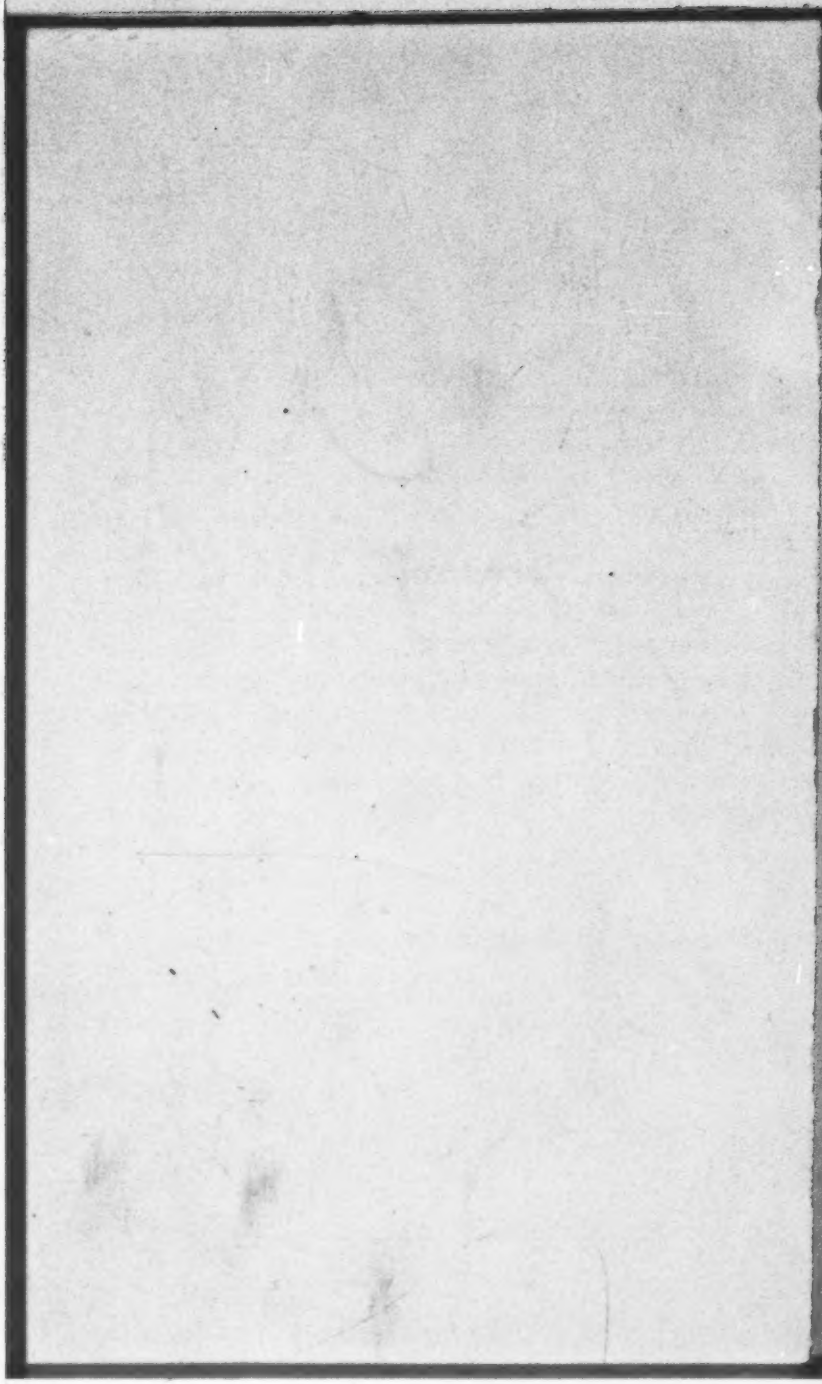
Geo. M. Burditt, being first duly sworn, deposes and says that he is one of the counsel of the petitioner in the above entitled cause; that on the 24th day of October, 1928, he served a true and correct copy of the foregoing petition upon Harry P. Sneed, the attorney for the respondents therein and a true and correct copy of the transcript of the record in the above entitled cause as printed by and under the direction of the Clerk of the Supreme Court of the United States, by mailing in the United States Post Office at Chicago, Illinois, said copies to the said Harry P. Sneed in a securely sealed, postpaid wrapper, addressed to the said Harry P. Sneed, Whitney Bank Building, New Orleans, Louisiana, that being the true and correct address of said attorney for the respondents.

Geo. M. Burditt.

Subscribed and sworn to before me by Geo. M. Burditt, this 24th day of October, 1928.

Bernadette Butler,
Notary Public, Cook County,
Illinois.

(Seal)
My commission expires December 6, 1930.



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CHARLES ELMORE

IN THE

Supreme Court of the United States

October Term, A. D. 1928.

No. 306.

CARSON PETROLEUM COMPANY,
Appellant,

v.

LEON C. VIAL, Sheriff and Tax Collector of the Parish of St. Charles, R. A. DeBroca, Assessor for the Parish of St. Charles, et al.,
Appellees.

APPELLANT'S BRIEF.

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Appellees.

APPELLANT'S BRIEF.

Opinion Below.

The opinion of the Supreme Court of Louisiana reversing the trial Court is reported in *117 So. 432* and is printed in full at pp. 22 *et seq.* of the transcript of record.

Statement of Case.

The appellant filed its petition in the District Court of St. Charles Parish, Twenty-Eighth Judicial District, Louisiana, alleging that the Louisiana Tax Commission and the Assessor for the Parish of St. Charles made an assessment on oil in transit in the amount of $200,000.00;

that the appellant refused to pay the tax thereon for the reason that the oils so taxed were in transit from other states in the Union to foreign countries; that the tax was, therefore, a tax and burden on interstate and foreign commerce, and repugnant to the provisions of Article I, Section 8, Clause 3, Article I, Section 9, Clause 5, and Article I, Section 10, Clause 2, of the Constitution of the United States and the laws of the State of Louisiana, and prayed that the Sheriff and Tax Collector and the Assessor for the Parish of St. Charles and the Louisiana Tax Commission be restrained from laying or levying said illegal assessment and that the Sheriff and Tax Collector be restrained from advertising, seizing or attempting to sell appellant's property in his effort to collect the said tax, and that the assessment and tax be declared illegal, null and void.

The Decisions Below.

The trial Court entered a judgment declaring the assessment and taxes levied to be illegal, null and void, and issued an injunction restraining the levying of any tax upon the property of the appellant (R. 21). The Supreme Court of Louisiana reversed the judgment of the trial Court (R. 21).

Essential Facts.

The business of the appellant is buying gasolene, kerosene and various petroleum products for shipment for export (R. 8) to France, England, Belgium, Spain, China, Japan, Australia, and South America (R. 18).

In the conduct of its business the appellant first secures orders for export shipments, then purchases the

petroleum products from various refineries in the Mid-Continent Field, mostly in the States of Kansas, Oklahoma and Texas, from which it is shipped in tank cars (R. 9), consigned to the Petroleum Import & Export Corporation at St. Rose, a subsidiary of appellant (R. 13) on a bill of lading reading for export, and at an export rate (R. 14).

Upon arrival at St. Rose the merchandise oil is emptied from the tank cars into tanks (R. 13) and thence loaded into tank steamers upon their arrival (R. 9).

The appellant never retards the shipment from St. Rose, the only delay ever occasioned being due to delay in the arrival of a vessel or the material (R. 11, 12). A cargo consists of from two to three million gallons and requires from three to five hundred tank cars, an ordinary freight train carrying about thirty tank cars (R. 9, 10). The appellant makes it a point to get the trains of tank cars at the loading depot before the vessel arrives (R. 10).

Neither the State of Louisiana, the Port Authorities of New Orleans, nor the Police Jury of the Parish of St. Charles has provided requisite and necessary facilities for handling cargoes of oil for export. The Petroleum Import & Export Corporation, a subsidiary of appellant, has established and constructed on the Mississippi River front at St. Rose necessary equipment for such handling (R. 8).

Without exception the cargoes are sold by appellant to foreign buyers before it makes any purchases from the refineries (R. 10), and it has never made any shipments

to St. Rose before actual sale to a foreign purchaser (R. 11).

Shipments to St. Rose are made on the export freight rate (R. 14). The merchandise shipped through St. Rose is of a higher gravity than used in this country (R. 13).

No merchandise oil was ever shipped to St. Rose for storage, nor has any merchandise oil located in the tanks at St. Rose ever been sold for the domestic trade in the United States of America or the State of Louisiana (R. 12).

The Parish of St. Charles made an assessment for 1923 against the appellant on merchandise oil at St. Rose in the amount of $200,000.00 upon which a tax was assessed of $3,885.00 (R. 20).

Specification of Assigned Errors Intended to Be Urged.

The Supreme Court of Louisiana erred in reversing the judgment of the trial Court in which the assessment and tax were held to be illegal, null and void (Assignments I, II) (R. 37, 38) and erred in decreeing the collection of the tax (Assignment III) (R. 38).

The said Court erred in holding that the merchandise oil was subject to the State tax (Assignment IV) and was not in transit in foreign commerce (Assignment VI) (R. 38).

The said Court erred in holding that the merchandise oil was not exempt from taxation under the provisions of Article I, Section 8, Clause 3, Article I, Section 9, Clause 5, and Article I, Section 10, Clause 2 of the Constitution of the United States of America (Assignment VIII) (Rec. 39).

Point I.

(a) The Interstate and Foreign Journey Started When the Merchandise Oil Left the Refineries in the Mid-Continent Field and the Continuity of That Journey Was Not Broken By the Interruption at St. Rose.

Champlain Realty Company v. Brattleboro, 260 U. S. 366;

Baltimore & Ohio Southwestern R. R. Co. v. Settle, et al., 260 U. S. 166;

Hughes Brothers Timber Co. v. Minnesota, 272 U. S. 469;

Swift & Company v. United States, 196 U. S. 375;

Southern Pacific Terminal Company v. Interstate Commerce Commission, et al., 219 U. S. 498;

Railroad Commission of Ohio v. Worthington, Receiver of the Wheeling & Lake Erie R. R. Co., 225 U. S. 101;

Texas & New Orleans R. R. Co. v. Sabine Tram Co., 227 U. S. 111;

Railroad Commission of Louisiana v. Texas & Pacific Ry. Co., 229 U. S. 336;

Philadelphia & Reading Ry. Co. v. Hancock, 253 U. S. 284.

Cases Distinguished.

General Oil Company v. Crain, 209 U. S. 211;

Coe v. Errol, 116 U. S. 517;

Bacon v. Illinois, 227 U. S. 504.

(b) The Equipment at St. Rose Was Solely a Safety Appliance Used in the Continuous Transit of the Merchandise Oil from the Mid-Continent Field to Its Foreign Destination.

Champlain Realty Company v. Brattleboro, 260 U. S. 366;

Hughes Brothers Timber Co. v. Minnesota, 272 U. S. 469;

Swift & Company v. United States, 196 U. S. 375;

Southern Pacific Terminal Company v. Interstate Commerce Commission, et al., 219 U. S. 498;

State v. Engle, 34 N. J. L. 425;

State v. Carrigan, 39 N. J. L. 35.

Point II.

The Tax Levied Against the Merchandise Oil Under the General Revenue Act of the State of Louisiana Was Repugnant to the Pertinent Provisions of the Constitution of the United States.

General Revenue Law of Louisiana, Act 109 of 1921;

Constitution of the United States,
Article I, Section 8, Clause 3;
Article I, Section 9, Clause 5;
Article I, Section 10, Clause 2.

Peck & Co. v. Lowe, 247 U. S. 165;

Champlain Realty Company v. Brattleboro, 260 U. S. 366;

Hughes Brothers Timber Co. v. Minnesota, 272 U. S. 469;

Coe v. Errol, 116 U. S. 517.

Point III.

The Judgment of the Supreme Court of Louisiana Should Be Reversed and the Judgment of the Trial Court Affirmed.

Argument.

Point I.

(a) The Interstate and Foreign Journey Started When the Merchandise Oil Left the Refineries in the Mid-Continent Field and the Continuity of That Journey Was Not Broken By the Interruption at St. Rose.

The taxing authorities of the State of Louisiana have assessed a tax on the merchandise oil in question at St. Rose on the theory that the foreign journey did not start until the oil was placed on board a tank steamer.

The undisputed facts conclusively establish, as a matter of law, that the interstate and foreign journey actually started when the merchandise oil left the refineries in the Mid-Continent Field, and that, from that time on, the product was in actual and continuous transit to the final foreign destination.

The appellant, having first obtained orders abroad, went into the Mid-Continent Field and made purchases against those orders at various refineries. The gasolene was manufactured for export and of a quality different from that commonly used in the United States; it was shipped under an export freight rate maintained by the railroads, and as soon after arrival at St. Rose as the vessel supplied by the purchaser arrived, continued on the journey in exactly the same form, character and condition as it had been shipped from the refinery. To fill one vessel required from three hundred to five hundred tank cars, or from ten to fifteen complete freight trains of tank cars. Undisputedly, the railroad facilities at St.

Rose would not permit direct loading from tank car to tank steamer without great inconvenience, waste and loss (R. 18).

In determining the right of a State to tax, Mr. Chief Justice Taft, in *Champlain Realty Co. v. Brattleboro, 260 U. S. 366,* has said, p. *377:*

> "Interstate continuity of transit is to be determined by a consideration of the various factors of the situation. Chief among these are the intention of the owner, the control he retains to change destination, the agency by which the transit is effected, the actual continuity of the transportation, and the occasion or purpose of the interruption during which the tax is sought to be levied."

In the instant case it is beyond dispute that it was the intention of the appellant to continue the merchandise oil to the foreign port. That intention is clearly shown by the course of business of the appellant in first securing orders from abroad, in purchasing a quality of gasolene used abroad against these foreign orders actually on hand, in shipping from the Mid-Continent Field to tidewater under the export freight rate, and in placing the oil on board vessel at the very earliest possible moment, and never deviating from that course.

In *Baltimore & Ohio Southwestern Railroad Company v. Settle, et al., 260 U. S. 166,* this Court held that the intention determined, as matter of law, the essential nature of the movement and that, even though the original billing was to a certain point, if the intention was to subsequently re-bill to another state, the entire movement was interstate.

When the appellant caused the merchandise oil to be shipped under the export freight rate, its control to change the destination was surrendered for the reason that the appellant could not obtain for itself the benefit of the lower export railroad freight rate and then apply the merchandise to domestic use.

The agencies by which the transit was effected were the only available methods of transportation. From the interior, tank cars are the only conveyances available in the absence of a pipe line. From the sea port to the foreign port, tank steamers are the only available carriers. At the point of juncture equipment for the discharge from tank cars and thence to tank steamers is the only available agency. The record is clear that in the use of that equipment the only delay ever occasioned in the continuous flow of the merchandise oil was brought about by the necessity of waiting for a tanker or the arrival of a train, causes both beyond the control of the appellant.

The merchandise oil was, therefore, always in actual continuity of transportation with no interruption for the convenience or benefit of the appellant.

The principles by which this case is governed have been clearly announced by this Court in a number of cases. Foremost among these is *Champlain Realty Co. v. Brattleboro, 260 U. S. 366,* in which the Realty Company sought to recover the amount of a tax levied on logs of pulp wood and paid under protest as illegally collected because the logs were then in transit in interstate commerce. The statement of facts shows that the pulp wood was cut by plaintiff at various points in Vermont during the winter and placed upon the banks of the West

River and its tributaries, those streams being all within the State of Vermont, to be floated down into the Connecticut River and thence to their destinations at a mill in New Hampshire owned by the plaintiff. In the spring the plaintiff started the drive down the West River and tributaries, first, however, placing a boom across the mouth of the river at Brattleboro, Vermont, where the West River emptied into the Connecticut, to hold the logs until the Connecticut receded sufficiently to permit the safe transit of the logs to the plaintiff's New Hampshire mill. The tax was levied on the logs while they were held in the boom at Brattleboro. In holding that the interstate trip began when the logs were placed in the West River and tributaries, that the real continuity of the trip was not broken, and that the tax was illegally assessed, Mr. Chief Justice Taft, speaking for the Court, says at p. 373:

> "The question here, then, is: Where did the interstate shipment begin? When the wood was placed in the waters of the West River, in the Towns of Jamaica, Stratton, Londonderry, and Winhall, or at the boom in Brattleboro? * * * Did the fact that before April 3rd the waters of the Connecticut were frozen, or so high as to prevent the logs reaching Hinsdale, requiring a temporary halting at the mouth of the West River, break the real continuity of the interstate journey? We think not. The preparation for the interstate journey had all been completed at the towns on the West River where the wood had been put in the stream. The boom at the mouth of the West River did not constitute an entrepot or depot for the gathering of logs preparatory for the final journey. It was only a safety appliance in the course of the journey. It was a harbor of refuge from danger to a shipment on its way. It was not used by the owner for any beneficial purpose of his

> own except to facilitate the safe delivery of the wood at Hinsdale, on their final journey already begun. The logs were not detained to be classified, measured, counted, or in any way dealt with by the owner for his benefit, except to save them from destruction in the course of their journey, that, but for natural causes, over which he could exercise no control, would have been actually continuous."

It is apparent that the boom at the mouth of the West River was established for the reason that the boom at the mill was not capable of holding the logs against the flood waters of the Connecticut, and they were held there as they arrived from their various points of origin until they could be safely floated down the Connecticut and held in the boom at the mill, and be thus saved from being carried on through the boom to waste and destruction beyond.

In the instant case the gasolene, manufactured in the Mid-Continent Field for export, purchased to fill foreign orders already on hand, shipped for export and on the railroad export freight rate, was taken out of the tank cars at St. Rose for the reason that the railroad facilities were not capable of holding the three hundred to five hundred cars required to fill one tank steamer, and was placed in the equipment maintained by the plaintiff's subsidiary, and was thus saved from waste (R. 17).

The interruption at St. Rose was clearly only to promote the safe or convenient transit of the merchandise oil, and as this Court said in the *Brattleboro case*, p. 376:

> "If the interruptions are only to promote the safe or convenient transit, then the continuity of the interstate trip is not broken."

One could as well contend that a shipment of meat from the great packing plants in the interior could not be removed from a refrigerator car to a refrigerating plant before being placed on board a vessel for export, and thus saved from destruction by decay, as to contend that a highly volatile and explosive gasolene could not be removed from a tank car to a safety tank and thus saved from danger and evaporation under the semi-tropical sun of St. Rose, Louisiana.

The record is clear and undisputed that there was no change in the character of the merchandise oil at St. Rose, that it was not classified, or in any way dealt with by appellant (R. 18), that the appellant never retarded the shipment (R. 11), that there was never any delay in the continuity of the interstate journey unless caused by the delay in the arrival of the vessel or train (R. 11, 12), causes over which the appellant had no more control than the mill owner had over the waters of the Connecticut.

The doctrine of the *Brattleboro case* has been reiterated in *Hughes Bros. Timber Company v. Minnesota, 272 U. S. 469,* also a tax case, which was brought by the Treasurer of Cook County, Minnesota, to collect taxes on personal property owned by the timber company. The timber company cut pulp wood at various places in Cook County, from which places it was hauled to the Swamp River and piled upon the ice and river banks a short distance above its discharge into the Pigeon River. The timber company had contracted with a paper company of Michigan to deliver to the paper company, over the rail of the latter's vessels at the mouth of the Pigeon River, a quantity of spruce pulp wood. The hauling and

placing of the logs on the ice and on the banks of the Swamp River were completed in the latter part of March. When the ice broke in April, the drive of the logs began, those on the ice moving themselves and those on the banks being pushed in, and was completed eighteen days later when the logs reached the Pigeon River booms. By the latter part of July all of the logs had been shipped by vessel to Michigan. As the Court say at p. 474:

> "All this characterizes what was being done in the drive between the Swamp River entrepot and the mouth of the Pigeon River. That was the beginning or first leg of the interstate journey. The obligations of both parties accorded with that view. The change in the method of transportation by floating to carriage on the vessel did not affect the continuity of the interstate passage, if such a passage was intended by the parties and had begun, any more than did shipment by local railroad bills of lading from a point in a state to a port of the same state, for shipment by vessel to a foreign port, prevent its being interstate or foreign commerce."

We can discern no difference between delivering pulp wood over the rail of a purchaser's vessel and delivering merchandise oil into the hold of the purchaser's tank steamer. In the timber case the actual drive of the logs to the port of loading upon the vessel was completed not later than April 17th, yet they were not all shipped by vessel until the latter part of July, and that interruption was, in the language of Mr. Chief Justice Taft, "only incidental to the journey and the necessary change in the mode of transportation." Under those circumstances this Court held the property not subject to local taxation.

So in the instant case, we most respectfully urge, that any delay at St. Rose was only incidental to the journey and the necessary change in the mode of transportation, and the property was, therefore, not taxable by the State.

It is not in tax cases alone that this Court has held that an interruption in a journey does not remove the merchandise from its character as an interstate shipment, but such holding is made in cases involving combinations in restraint of trade, the power of the Interstate Commerce Commission to fix freight rates, and compensation cases, as well as many others.

Swift & Company v. United States, 196 U. S. 375, is one of the cases involving an alleged combination in restraint of trade, in which the Court said, at p. 398:

> "* * * commerce among the States is not a technical legal conception, but a practical one, drawn from the course of business. When cattle are sent for sale from a place in one State, with the expectation that they will end their transit, after purchase, in another, and when in effect they do so, with only the interruption necessary to find a purchaser at the stock yards, and when this is a typical, constantly recurring course, the current thus existing is a current of commerce among the states, and the purchase of the cattle is a part and incident of such commerce. * * *
>
> "It should be added that the cattle in the stock yard are not at rest even to the extent that was held sufficient to warrant taxation in *American Steel & Wire Co. v. Speed, 192 U. S. 500.*"

How much stronger is the instant case where the interruption at tide-water was not for the purpose of procur-

ing a purchaser, but solely for the purpose of transferring from rail to water transportation.

Southern Pacific Terminal Company v. Interstate Commerce Commission, et al., 219 U. S. 498, in which it was sought to establish that a railroad was favoring one customer, clearly brings out our contention that the necessary stoppage in transit at tide-water is not such an interruption as to break the continuity of the interstate and foreign shipment. In that case it appears that the Southern Pacific Terminal Company owns certain piers at Galveston, Texas, on which it has erected all facilities for handling imported and exported freight and another pier erected for one Young, a merchant engaged in buying and selling cotton seed cake in the interior, shipping it to himself by carloads at the pier, where, by the use of machinery, he grinds it into meal, sacks it and then loads it into steamships berthed at the pier for export. The Court, in holding the merchandise to be in foreign commerce, say, at p. 526:

> "In other words, the manufacture or concentration on the wharves of the Terminal Company are but incidents, under the circumstances presented by the record, in the transshipment of the products in export trade, and their regulation is within the power of the Interstate Commerce Commission. • • • It makes no difference, therefore, that the shipments of the products were not made on through bills of lading, or whether their initial point was Galveston or some other place in Texas. They were all destined for export, and by their delivery to the Galveston, Harrisburg, and San Antonio Railway they must be considered as having been delivered to a carrier for transportation to their foreign destination, the Terminal Company being a part of the railway for

such purpose. The case, therefore, comes under *Coe v. Errol, 116 U. S. 517,* where it is said that goods are in interstate, and necessarily as well in foreign, commerce when they have 'actually started in the course of transportation to another state or been delivered to a carrier for transportation.' "

That case discloses a situation where the shipper is in control as lessee of equipment for handling the commodity at tide-water, just as is the appellant in the instant case through the ownership, by its subsidiary, of the equipment at St. Rose, but in the cited case the use of that equipment was not solely for the purpose of transferring the freight from land to water, but was for the purpose of converting cotton seed into meal, and then into sacks before shipment abroad, either to fill orders already on hand, or orders then taken. That commodity the Court held still to be in transit. In the instant case there was no change in the character of the commodity, there was no holding pending a sale, but the merchandise oil was at St. Rose to fill orders taken before the oil was purchased at the refineries and was moved at the very earliest possible moment.

Cases involving the fixing of freight rates are well summarized in *Railroad Commission of Ohio v. Worthington, Receiver of the Wheeling & Lake Erie Railroad Company, 225 U. S. 101,* a case involving the right of the Ohio Railroad Commission to regulate the railroad freight rate on coal mined in Ohio and shipped by rail, under an export freight rate, either to Huron or Cleveland, where the railroad has elaborate facilities for loading into vessels. The coal may be accumulated in large quantities at Huron and only taken out of the accumu-

lated lots from time to time, when it is put upon vessels and shipped out of the State, and on those facts this Court held, at p. 108:

> "By every fair test the transportation of this coal from the mine to the upper lake ports is an interstate carriage, intended by the parties to be such, and the rate fixed by the commission, which is in controversy here, is applicable alone to coal which is thus, from the beginning to the end of its transportation, in interstate carriage, * * *"

There, even though the coal may be accumulated in large quantities at the point of loading upon board the vessels, the shipment having been intended for interstate carriage, retained that character. At St. Rose there was no accumulation, except that necessary to fill the vessel.

Another tax case, involving a foreign shipment, is *Texas & New Orleans Railroad Company v. Sabine Tram Company, 227 U. S. 111,* in which it is held that lumber purchased in Texas, shipped by rail to tide-water, there placed in the water and subsequently shipped to a foreign port, was in continuous transportation to a foreign port from the time it left the mill in the interior, the Court saying, at p. 130:

> "The lumber was ordered, manufactured, and shipped for export. And we say "shipped", for we regard it of no consequence that the Sabine Company had no concern or connection with it after it reached Sabine. * * * And the shipment was not an isolated one, but typical of many others, which constituted a commerce amounting in the year 1905 to 14,667,670 feet of lumber, and in the year 1906, 39,554,000 feet. Nor was there a break, in the sense of the Interstate Commerce law and the cited cases, in the continuity of the transportation of the lumber

to foreign countries by the delay and its transshipment at Sabine. Nor, as we have seen, did the absence of a definite foreign destination alter the character of the shipments."

So, also, the shipment of merchandise oil through St. Rose was not an isolated transaction, but was part of a continuous performance, the shipments running up to fifty tank steamers a year, aggregating between one hundred and one hundred fifty million gallons of gasolene.

To the same effect is *Railroad Commission of Louisiana v. Texas and Pacific Railway Company, 229 U. S. 336,* involving numerous shipments to New Orleans of logs and staves on shipper's or consignee's order bill of lading, all of the shipments being forwarded abroad by steamer.

The doctrine as applied in compensation cases is found in *Philadelphia & Reading Railway Company v. Hancock, 253 U. S. 284,* in which it is held that an employe engaged in transporting cars from the colliery to the railroad yard two miles away, where the cars were gathered into trains to be transported to other states, was engaged in interstate commerce, saying that "the shipment was but a step in the transportation of the coal to real and ultimate destinations in another state."

Thus, we submit, that from every angle of the transaction this Court has held uniformly that where goods are shipped from one State to another, or from a State to tide-water, for export, even though there be an incidental interruption in the journey, still the commodity remains at all times in interstate or foreign commerce.

Appellees' Contentions Distinguished.

The appellees have argued that St. Rose was the point at which the foreign commerce actually started, but their argument is based upon a theory contrary to the undisputed fact, clearly testified to, that, from the moment the merchandise oil was placed upon the tank cars at the refineries in the Mid-Continent Field, it was intended for the foreign destination to which it actually went by rail and vessel in continuous shipment until it reached the purchaser in a foreign country, with no interruption except that necessary temporary delay incident to the change from rail to water transportation. In support of their theory the appellees have relied principally upon *General Oil Company v. Crain, 209 U. S. 211*, and *Coe v. Errol, 116 U. S. 517*, and the decision of the Supreme Court of Louisiana is based upon the *Crain case*, but under a misapprehension of the facts, facts which are clearly distinguishable from the present case, and under a misapprehension of the holding which is in harmony with the judgment of the trial Court that the merchandise oil was not taxable, and entirely contrary to the holding of the Louisiana Supreme Court.

A major distinguishing feature of the *Crain case* is most effectively stated by Mr. Chief Justice Taft in the *Brattleboro case* at page 375 *(260 U. S. supra)*, as follows:

> "So in *General Oil Company v. Crain, 209 U. S. 211*, the Oil Company had its principal place of business in Memphis, Tennessee, for the manufacture and sale of illuminating oils in interstate commerce. It imported oil from other states and put it into a tank, appropriately marked for distribution in smaller ves-

sels to fill orders for oil already sold in Arkansas, Louisiana, and Mississippi. The court held that the first shipment had ended; that its storage at Memphis for division and distribution to various points was for the business purposes and profit of the company. The court continued:

"'It was only there for distribution, it is said, to fulfill orders already received. But to do this required that the property be given a locality in the state beyond a mere halting in its transportation.' (p. 231). The tank at Memphis thus became a depot in its oil business for preparing the oil for another interstate journey."

In the instant case there was no preparing of the oil for another interstate journey. There was no division and distribution; it was merely halted in its journey for the necessary transfer from overland transportation to water transportation.

Another distinguishing feature in the *Crain case* is that the oil in bulk was stored in the company's tanks for the purpose of being broken up into small quantities, such as barrel quantities for shipment to customers. Not so in the present case. Still another distinction is that the oil company was doing a local business in Memphis where the property was taxed. Not so in the instant case. All of the merchandise oil which went to St. Rose was transported to Europe.

Turning then to *Coe v. Errol, 116 U. S. 517*, the facts differ from the instant case in that Coe and others owned a large number of spruce logs which had been drawn down during the winter before April 1, 1880, from Wentworth's Location in New Hampshire, and placed in Clear Stream and on its banks in the town of Errol, Coos County, New

Hampshire, to be thence floated down the Androscogin River to the State of Maine to be there manufactured and sold. Another quantity of spruce logs belonging to Coe and another had been cut in Maine and were being floated to Lewiston, Maine, to be manufactured but were detained in the Town of Errol, New Hampshire, by low water. The Supreme Court of New Hampshire abated the tax on those logs which were detained because of the low water, but sustained the tax on the others. That judgment was affirmed. It is a clear holding that the logs which were interrupted in their continuous transit by reason of the inability to keep them moving were not taxable. That is exactly the situation with the merchandise oil now in question. The difference between the situation as to those logs which were detained by low water, and the logs which were assembled in the Township of Errol, is made clear in the reference to the *Crain case*, in the *Brattleboro* opinion, p. 372 *(260 U. S., supra)*:

> "The learned justice states the rule to be 'that such goods do not cease to be part of the general mass of property in the state, subject, as such, to its jurisdiction, and to taxation in the usual way, until they have been shipped, or entered with a common carrier for transportation to another state, or have been started upon such transportation in a continuous route or journey' (p. 527).
>
> "Again, on page 528, Justice Bradley said: 'The carrying of them in carts or other vehicles, or even floating them to the depot, where the journey is to commence, is no part of that journey. That is all preliminary work, performed for the purpose of putting the property in a state of preparation and readiness for transportation. Until actually launched on its way to another state, or committed to a common

carrier for transportation to such state, its destination is not fixed and certain.'

* * *

"The application of these principles to the present case is obvious. The logs which were taxed, and the tax on which was not abated by the supreme court of New Hampshire, had not, when so taxed, been shipped or started on their final voyage or journey to the state of Maine. They had only been drawn down from Wentworth's location to Errol, the place from which they were to be transported to Lewiston, in the state of Maine. There they were to remain until it should be convenient to send them to their destination" (p. 528).

How different is the situation with the merchandise oil in question. It had been refined to meet the requirements of European countries. The appellant had already sold it in the foreign market, and it had purchased it in the Mid-Continent Field to fill orders actually on hand. It had entered it with the railroad company as a commodity for export and had paid the foreign export freight rates. It had caused it to be transported to the waterside on its way to the foreign destination and, at waterside, as soon as it could be placed in a tank steamer, it continued in bulk on the journey, started back in the Mid-Continent Field, to its final place of destination abroad. It was handled in the only safe and feasible way. The temporary interruption in its journey was necessary in its handling and loading into tankers.

The distinction in the *Coe case* is again brought out and referred to by this Court in the *Hughes Brothers Timber Company case, 272 U. S. 469,* at p. *475 (supra).*

Another case relied upon by the appellees is *Bacon v. Illinois, 227 U. S. 504,* and that also is conclusively distinguished in the *Brattleboro case* at p. 374: It is pointed out that Bacon bought shipments of grain *in transitu* from western states to New York, and that on arrival of the grain in Chicago, Bacon removed the grain from the cars to his private elevator for the purpose of inspecting, weighing, grading, mixing, etc., but not to change its ownership, consignee, or destination, and the Court held that, whatever his intention, the grain was at rest within his complete power of disposition, held for his own benefit and taxable, saying:

> "His storing of the grain was not to facilitate interstate shipments of the grain, or save it from the danger of the journey. It was to enable him to treat the grain so as to enable him more conveniently to dispose of it. He made his warehouse a depot for its preparation for further shipment and sale. He had thus suspended the interstate commerce journey and brought the grain within the taxable jurisdiction of the state."

The distinguishing facts are at once apparent. Bacon, having purchased some carloads of grain then rolling under through bill of lading from the West to New York, diverted the shipments to his private elevator in Chicago for the purpose of inspecting, weighing, grading and mixing; in other words, the shipment, for no cause except the convenience of the purchaser, was diverted from its original shipment and brought to a halt at the grain elevator and there dealt with for the benefit of the owner.

In the instant case when the merchandise oil was once consigned from the refineries to tide-water under a bill of lading marked for export, and on the export rate, that merchandise oil never deviated in the slightest from the

journey as originally intended, and was never interrupted for any purpose except to change the method of transportation from rail to water and remained at all times in actual continuous interstate and foreign shipment.

We, therefore, submit that the merchandise oil in question, at the time of the assessment, was in actual foreign commerce, and that the tax was illegally assessed.

(b) The Equipment at St. Rose Was Solely a Safety Appliance Used in the Continuous Transit of the Merchandise Oil from the Mid-Continent Field to Its Foreign Destination.

The evidence establishes that neither the State of Louisiana, the Port Authorities of New Orleans, nor the Police Jury of the Parish of St. Charles has provided the requisite and necessary facilities for handling the oil for export, and that the Petroleum Import & Export Corporation has established and constructed such necessary facilities and equipment at St. Rose (R. 8).

The merchandise oil upon arrival at St. Rose by rail is discharged into the tanks owned by appellant's subsidiary, and there reloaded into a tank steamer as soon as the vessel is available, and immediately continued on its journey to foreign destination (R. 9).

There is no delay or standing of any quantity of gasolene at St. Rose except waiting for a vessel (R. 18). This method is a necessary accommodation in loading foreign merchandise (R. 16).

We have already seen in *Champlain Realty Company v. Brattleboor, 260 U. S. 366,* that the boom at the mouth of the West River, where the logs were held pending a receding of the Connecticut River, and in *Hughes Brothers Timber Company v. Minnesota, 272 U. S. 469,* that the booms in the Pigeon River, where the logs were held until they could be loaded upon a vessel, were a mere safety appliance in the continuous interstate journey.

Likewise, in *Swift & Company v. United States, 196 U. S. 375,* we have also seen that the stock yards are a mere convenience in the interstate transportation, and in *Southern Pacific Terminal Company v. Interstate Commerce Commission, et al., 219 U. S. 498,* that the pier at the tide-water, where the cotton seed was manufactured into meal, and then shipped, was only an incident in the continuous transportation.

In *State v. Engle, 34 N. J. L. 425,* cited with approval in *Champlain Realty Company v. Brattleboro, 260 U. S. 366,* coal mined in Pennsylvania was shipped by cars to Elizabethport, New Jersey, to be thence shipped by water to other markets for the purpose of sale. At Elizabethport on tide-water the coal was deposited and separated according to its different sizes, and when a cargo of one size was obtained it was shipped to points in other states as soon as a vessel could be chartered to carry it, no coal being sold for consumption at Elizabethport, the Court saying:

> "The power of the state to tax the subjects of commerce, where their transit for the purposes of commerce has ceased, and they have become incorporated and mixed up with the mass of property in the community, is well settled. But that a tax on

property belonging to a citizen of another state, in its transit to market in other states, which is delayed within this state, not for the purpose of sale, but merely for separation and assortment for the convenience of shipment to its destination, is a tax on commerce among the states, is too plain to require argument.

"Delay within the state, which is no longer than is necessary for the convenience of trans-shipment for its transportation to its destination, will not make it property within the state for the purposes of taxation."

In that case the docks at waterside were the implement necessary in the change from rail to water transportation; in that case there was not only the holding while waiting for the vessel, there was also a separation of the coal into different sizes. In the instant case there was only the holding, no separation.

To the same effect is *State v. Carrigan, 39 N. J. L. 35,* also cited with approval in the *Brattleboro case.*

The appellant ships up to fifty tankers a year (R. 15), an average of approximately one tanker each week. Some method was necessary for the handling of this weekly two million to three million gallons of merchandise oil in its constant flow through the port at St. Rose. The equipment constructed by the appellant's subsidiary furnishes that method of change from rail to water transportation.

We therefore submit that the use of the facilities furnished at St. Rose by which the oil was safely, conveniently and quickly transferred from rail to water car-

riage, did not give the merchandise oil thus being transferred a situs in the State of Louisiana, and that the attempt to tax the commodity at that time was illegal.

Point II.

The Tax Levied Against the Merchandise Oil Under the General Revenue Act of the State of Louisiana Was Repugnant to the Pertinent Provisions of the Constitution of the United tSates.

The General Revenue Law of Louisiana, Act 109 of 1921, under which this tax was assessed, is entitled:

> "To provide an annual revenue for the State of Louisiana, by the levying of annual taxes upon all property not exempted from taxation; fixing the rates; and setting forth the purposes for which said levy is made; and prescribing the method of assessing and collecting the same; and enforcing the payment thereof."

The Constitution of the United States of America provides as follows:

> "*Article I, Section 8, Clause 3:*
> "The Congress shall have power * * * to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;"
> *Article I, Section 9, Clause 5:*
> "No Tax or Duty shall be laid on Articles exported from any State."
>
> *Article I, Section 10, Clause 2:*
> "No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws; and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treas-

> ury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress."

The assessment roll shows that the tax was divided for State, Parish, Levee, School and Road purposes (R. 20) and was not, therefore, a tax embraced within the exception contained in the Constitution.

In *Peck & Co. v. Lowe, 247 U. S. 165,* the Court has said of Article I, Section 9, Clause 5 of the Constitution, at p. 173:

> "That clause says 'No tax or duty shall be laid on articles exported from any State.' Of course, it qualifies and restricts the power to tax as broadly conferred. But to what extent? The decisions of this court answer that it excepts from the range of that power articles in course of exportation, * * * In short, the court has interpreted the clause as meaning that exportation must be free from taxation."

We, therefore, respectfully submit that the undisputed facts in this record, to which we have already made reference, clearly come within those cases where this Court has held that the property was in actual interstate and foreign commerce, and that the oil was not legally taxable in the State of Louisiana.

Point III.

The Judgment of the Supreme Court of Louisiana Should Be Reversed and the Judgment of the Trial Court Affirmed.

The Constitution of the United States has deprived the individual States of the right to tax commodities moving in interstate and foreign commerce.

The facts are clear and undisputed, and to the effect that the equipment was constructed at St. Rose as a necessity; that the merchandise oil started on its foreign journey from the Mid-Continent Field; that that journey was interrupted at St. Rose merely because of the absolute necessity in changing from rail to water transportation; that no business of any kind or character was transacted at St. Rose except this necessary handling in the change from rail to water transportation, yet the taxing authorities have placed an assessment on that moving bulk property.

We submit that the tax is illegal for the reason that it is placed upon the property in actual and continuous foreign transit, and is, therefore, repugnant to the provisions of the Constitution of the United States.

Respectfully submitted,

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1928.

No. 306

CARSON PETROLEUM COMPANY,
Petitioner,

versus

LEON C. VIAL, SHERIFF AND TAX COLLECTOR FOR THE PARISH OF ST. CHARLES, LOUISIANA; R. A. DUBROCA, ASSESSOR FOR THE PARISH OF ST. CHARLES, LOUISIANA, ET ALS.,
Respondents.

Brief on Behalf of Respondents to Petition for Certiorari.

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MONTGOMERY-ANDREE PRINTING CO. INC., 420-422 CHARTRES, N.O.

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Brief on Behalf of Respondents to Petition for Certiorari.

May It Please the Court:

Respondents submit that neither the application for *certiorari* nor the record herein discloses grounds for the issuance of the writ by this Honorable Court.

STATEMENT OF FACTS.

The statement of facts submitted by petitioner will not at the present time be questioned by respondents, except

to supply important omissions. The oil bought by petitioner in the Mid-Continent Fields is shipped to St. Rose, Louisiana, in tank cars, consigned to the Petroleum Import and Export Corporation, its subsidiary, (R. 13), and transferred from cars to large tanks provided for its reception. The title to the oil is in the Carson Petroleum Company (R. 14). Insurance is carried on the oil for account of Carson Petroleum Company (R. 14), and it remains the property of the Carson Petroleum Company until it actually starts abroad on its foreign journey (R. 15). No oil ever passes through St. Rose on a through bill of lading (R. 14), and the quantity of a foreign shipment is never exactly pre-determined until loading is accomplished, the Carson Petroleum Company having the option of shipping and the buyer taking ten (10%) per cent more or less than his order (R. 10).

BRIEF.

It is thus completely shown that petitioner's plant at St. Rose, Louisiana, is an *entrepot* for the accummulation of oil which is not in transit in either interstate or foreign commerce. The interstate journey is completed when the oil is delivered to the consignee at St. Rose, Louisiana, and placed by it in storage tanks. The foreign journey does not begin until the cargo is determined upon, loaded aboard ship, and consigned to a new consignee. In the meantime, the oil in the tanks at St. Rose, Louisiana, is property at rest in the State of Louisiana, and under the complete control of petitioner, who has retained title thereto. The assessment has been levied on the average quantity of oil there on hand and the quantum thereof is not attacked.

With these facts in mind, respondents submit that the well-considered opinion of the Supreme Court of Louisiana herein (R. 22-13), and the authorities cited, fully dispose of the contentions urged in petitioner's application and brief, the Supreme Court saying:

> (R. 25)—"The interstate and foreign commerce clause of the Federal Constitution does not exempt movable property from state or local taxation, if it is not discriminative, unless the property is in actual transit in interstate or foreign commerce; and the question of continuity of transit which will exempt property moving in interstate or foreign commerce, from state or local taxation, is to be determined by the various factors in the situation, among which are the intention of the owner, the control which he retains to change the destination, the agency or agencies by which the transit is effected, and the cause or occasion or purpose of the interruption during which the property is assessed for state or local taxation. Champlain Realty Co. v. Brattleboro, 260 U. S., 366, 43 Sup. Ct. Rep., 146, 67 L. Ed., 309, 25 A. L. R., 1195.
>
> The mere intention of the owner to export the property, even when coupled with a preliminary shipment in preparation for exportation, does not constitute the beginning of an interstate or foreign shipment. To exempt the property from state or local taxation, it must have been shipped, or entered with a carrier for shipment, to another state or a foreign country, or started on a continuous route or journey beyond the state. Coe v. Errol, 116 U. S., 517, 29 L. Ed., 715, 6 Sup. Ct., 475; Diamond Match Co. v. Ontonagon, 188 U. S., 82, 47 L. Ed., 394, 23 Sup. Ct. Rep., 266; General Oil Co. v. Crain, 209 U. S., 211, 52 L. Ed., 754, 28 Sup. Ct. Rep., 475; Bacon v. Illinois, 227 U. S., 504, 57 L. Ed., 615, 33 Sup. Ct. Rep., 299; Champlain Realty Co. v. Brattle-

boro, 260 U. S., 366; 67 L. Ed., 509, 43 Sup. Ct. Rep., 146, 25 A. L. R., 1195; Rees-Scott Co. v. City of New Orleans, 124 La., 155, 49 So., 1012.

It is not possible to distinguish this case from General Oil Co. v. Crain, *supra*, in the application of the law to the facts of the case. The General Oil Company was a Tennessee Corporation, having its principal place of business in Memphis, and engaged in the business of manufacturing illuminating oils and selling them in other states into which they were shipped. The company's wells and refining plants were in Pennsylvania and Ohio, from which the oils were shipped into the states in which they were sold and used. On account of the tendency of the oils to leak and evaporate and to burst the containers in changes of temperature, it was necessary to ship the oils in railroad tank cars, to the several distributing points throughout the United States, at which the oil was put into barrels or other containers suitable in size for filling orders, which varied in amounts from one barrel upward. It was impracticable to maintain an equipment for the reception and distribution of the oil at every such point at which orders were filled. Memphis was one of such distributing points, to which the oils were shipped from Pennsylvania and Ohio in Tank cars, and at which the oils were unloaded into tanks and put into barrels and other smaller vessels and forwarded to the company's customers in Arkansas, Louisiana, and Mississippi, in which states the company had many regular customers, from whom it always had on hand unfilled orders for oil, to be delivered as soon as possible or convenient. The company conducted also a local business, selling and delivering oil to customers in Memphis, and maintained large tanks, of various sizes, for the several kinds of oil, to be put into barrels or other smaller vessels, to be sold locally or to fill the orders already received from the customers in Arkansas, Louisiana, and Mississippi. For many

years, the company unloaded its oil from its tank cars into the large stationary tanks without attempting to segregate the oil which was sold or intended to be sold locally from that which was to be forwarded to the customers in Arkansas, Louisiana, and Mississippi; and the company paid an inspection fee or tax of 25 cents per barrel, levied by a statute of Tennessee, on all of the oils in the company's stationary tanks in Memphis, whether the oil was intended for sale in Tennessee or in the other states mentioned. Being advised that the oil destined to be shipped and sold outside of the State of Tennessee would not be subject to the local inspection tax if kept separate from the oil sold or intended to be sold in Tennessee, the company inaugurated and maintained a system of segregating the oil that was to be shipped to the customers in Arkansas, Louisiana, and Mississippi, from that which was sold or intended to be sold in Tennessee. A stationary tank, marked plainly and conspicuously "Oil Already Sold in Arkansas, Louisiana, and Mississippi," was maintained, in which alone was kept the oil for which orders had been received from the customers in those states before the oil was shipped from the plants in Pennsylvania and Ohio especially to fill such orders. That oil was unloaded from the tank cars at Memphis into the stationary tank only for the purpose of putting it into the smaller vessels to meet the requirements of the orders which had been received from the customers in Arkansas, Louisiana, and Mississippi, before the oil was shipped from Pennsylvania or Ohio, and was kept separately, in the tank marked "Oil Already Sold in Arkansas, Louisiana, and Mississippi," until put into the smaller vessels and forwarded to the customers in those states. Another stationary tank, marked plainly and conspicuously "Oil to be Sold in Arkansas, Louisiana, and Mississippi," was maintained, in which the oil to be sold in those states, but for which there were no orders received before the oil was shipped in the tank cars from the company's

plants in Pennsylvania and Ohio, was kept separate and apart from all other oil until required for filling orders from the company's customers in those states, and was never sold except on receipt of such orders. Thereafter, the company invoked the commerce clause of the Constitution of the United States, contending that in so far as the inspection fee or tax was sought to be imposed upon the oil in the two tanks marked as we have said it was violative of the 3rd clause of the 8th section of article 1 of the Constitution, giving the Congress the exclusive power to regulate commerce among the several states. The defendant filed a demurrer, attacking the jurisdiction of the court on the ground that the suit was one against the state or against an officer acting by authority of the state. The chancery court overruled the demurrer in so far as the oil in the tank marked "Oil Already Sold in Arkansas, Louisiana, and Mississippi" was concerned, and sustained it in so far as the oil in the tank marked "Oil to be Sold in Arkansas, Louisiana, and Mississippi" was concerned. On appeal, the supreme court of Tennessee decided that the suit was one against the State, and reversed the decree of the chancery court. The plaintiff sued out a writ of error, and the Supreme Court of the United States affirmed the judgment on the ground that "no constitutional right of the oil company was violated by the enforcement of the law" levying the tax. In the course of the opinion, Mr. Justice McKenna, for the court, after reviewing many like cases, including Coe v. Errol, *supra*, and Diamond Match Co. v. Ontonagon, *supra*, said:

> "Like comment is applicable to plaintiff in error and its oil. The company was doing business in the state, and its property was receiving the protection of the state. Its oil was not in movement through the state. It had reached the destination of its first shipment, and it was held

there, not in necessary delay or accommodation to the means of transportation, as in State, Dotnold, Prosecutor, v. Engle, *supra*, but for the business purposes and profit of the company. It was only there for distribution, it is said, to fulfill orders already received. But to do this required that the property be given a locality in the the state beyond a mere halting in its transportation. It required storage there,—the maintenance of the means of storage; of putting it in and taking it from storage. The bill takes pains to allege this. 'Complainant shows that it is impossible, in the coal oil business, such as complainant carries on, to fill separately each of these small orders directly from the railroad tank cars, because of the great delay and expense in the way of freight charges incident to such a plan, and for the further reason that an extensive plant and apparatus is necessary in order to properly and conveniently unload and receive the oil from said tank cars, and it would be impracticable, if not impossible, to have such apparatus and machinery at every point to which complainant ships said oil'

"This certainly describes a business,— describes a purpose for which the oil is taken from transportation, brought to rest in the state, and for which the protection of the state is necessary —a purpose outside of the mere transportation of the oil. The case, therefore, comes under the principle announced in American Steel & Wire Co. v. Speed, 192 U. S., 500, 48 L. Ed., 538, 24 Sup. Ct. Rep. 365.

"We have considered this case so far in view of the cases which involve the power of taxation. It may be that such power is more limited than the power to enact inspection laws. The difference, if any exists, is not necessary to observe. The cases based on the taxing power show

the contentions of plaintiff in error are without merit; in other words, show that its oil was not property in interstate commerce."

The court considered and rejected, in the case just cited, every contention made in the argument of the oil company in the present case, to the effect that the unloading and storing of the oil in the stationary tanks was merely a necessary incident of the business and an unavoidable delay in the transportation of the oil beyond the state.

As to the method of assessing and taxing movable property that is temporarily halted and at rest, between its transportation within and its exportation from the state, it was said in Coe v. Errol, *supra:*

"But, granting all this, it may still be pertinently asked: How can property thus situated, to-wit: deposited or stored at the place of *entrepot* for future exportation, be taxed in the regular way as part of the property of the state? The answer is plain. It can be taxed as all other property is taxed, in the place where it is found, if taxed or assessed for taxation in the usual manner in which such property is taxed, and not singled out to be assessed by itself in an unusual and exceptional manner because of its destination. If thus taxed, in the usual way that other similar property is taxed, and at the same rate and subject to like conditions and regulations, the tax is valid. In other words, the right to tax the property being founded on the hypothesis that it is still a part of the general mass of property in the state, it must be treated in all respects as other property of the same kind is treated.

"These conditions we understand to have been complied with in the present case. At all events there is no evidence to show that the taxes were not imposed in the regular and ordinary

way. As the presumption so far as mode and manner are concerned, is always in favor of, and not against, official acts, the want of evidence to the contrary must be regarded as evidence in favor of the regularity of the assessment in this case."

The oil company, as appellee in this case, relies mainly upon the definitions given in cases involving, not the question of the right of a state to tax property claimed to be moving in interstate or foreign commerce, but the question as to whether the commerce itself—when claimed to be interstate or foreign commerce—is subject to state regulation or subject to Federal regulation. We refer particularly to Swift & Co. v. United States, 196 U. S., 375, 40 L. Ed., 518; Texas & New Orleans Railroad Co. v. Sabine Tram Co., 227 U. S., 111, 57 L. Ed., 442; and Railroad Commission of Louisiana v. Texas & Pacific Railway Co., 229 U. S., 336, 57 L. Ed., 1215. The Supreme Court of the United States, in defining "exports" and in determining when a shipment is in interstate or foreign commerce, has recognized or at least has intimated that the limitation on the power of the states to tax property when halted in an interstate or foreign shipment is not so strict as is the prohibition against any interference with the exclusive power of the Congress to regulate the interstate and foreign commerce itself. For example, in Swift & Co. v. United States, 196 U. S., 400, 49 L. Ed., 526, it is said:

"But we do not mean to imply that the rule which marks the point at which state taxation or regulation becomes permissible necessarily is beyond the scope of interference by Congress in cases where such interference is deemed necessary for the protection of commerce among the states. Nor do we mean to intimate that the statute under consideration is limited to that point. Beyond what we have said above, we leave

those questions where we find them. They were touched upon in Northern Securities Co. v. United States, 193 U. S., 197, 48 L. Ed., 679, 24 Sup. Ct. Rep., 436."

Accordingly, if the state were attempting, in this instance, to regulate, or to impose a burden, such as a license tax, upon, the business itself which is being conducted by the Carson Petroleum Company, or by the Petroleum Import & Export Corporation, at St. Rose, the case would present a different question—to which the rulings cited by counsel for the Carson Petroleum Company would be *apropos*.

According to the ruling in Coe v. Errol, Diamond Match Co. v. Ontonagon; General Oil Co. v. Crain, and Bacon v. Illinois, *supra*, as distinguished from and approved in Champlain Realty Co. v. Brattleboro, *supra*, the judgment appealed from must be reversed, and the demand of the plaintiff rejected and its suit dismissed."

Respondents respectfully submit that the writ of *certiorari* herein prayed for should be denied.

HARRY P. SNEED,
Counsel for Respondents.

A. P. FRYMIRE,
R. R. RAMOS,
C. S. LAGARDE,
Of Counsel.

Affidavit of Service.

STATE OF LOUISIANA)
PARISH OF ORLEANS)

Harry P. Sneed, being duly sworn, deposes and says that he is one of the counsel for respondents in the above-entitled cause; that on the 31st day of October, 1928, he served a true and correct copy of the foregoing brief by posting same in the United States Post Office at New Orleans, Louisiana, addressed to John K. Murphy, William E. Leahy, Harry A. Newby, and George M. Burditt, Continental Trust Building, Chicago, Illinois, in a securely sealed wrapper with postage prepaid, and by personally delivering a copy thereof to the office of Harold A. Moise, Whitney Central Building, New Orleans, Louisiana, all of the above being opposing counsel herein, and the addresses given being their true and correct addresses.

HARRY P. SNEED.

Subscribed and sworn to before me by Harry P. Sneed on this the 31st day of October, 1928.

WILLIAM J. KEARNEY, JR.,
Notary Public.

(Seal)

William J. Kearney, Jr.

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CHARLES EL

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928.

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No. 306

CARSON PETROLEUM COMPANY,

Appellant,

versus

LEON C. VIAL, SHERIFF AND TAX COLLECTOR FOR THE PARISH OF ST. CHARLES, LOUISIANA; R. H. DUBROCA, ASSESSOR FOR THE PARISH OF ST. CHARLES, ET AL.,

Appellees.

APPELLEES' BRIEF.

A. P. FRYMIRE,
R. R. RAMOS,
C. S. LAGARDE,
Of Counsel.

HARRY P. SNEED,
Counsel for Appellees.

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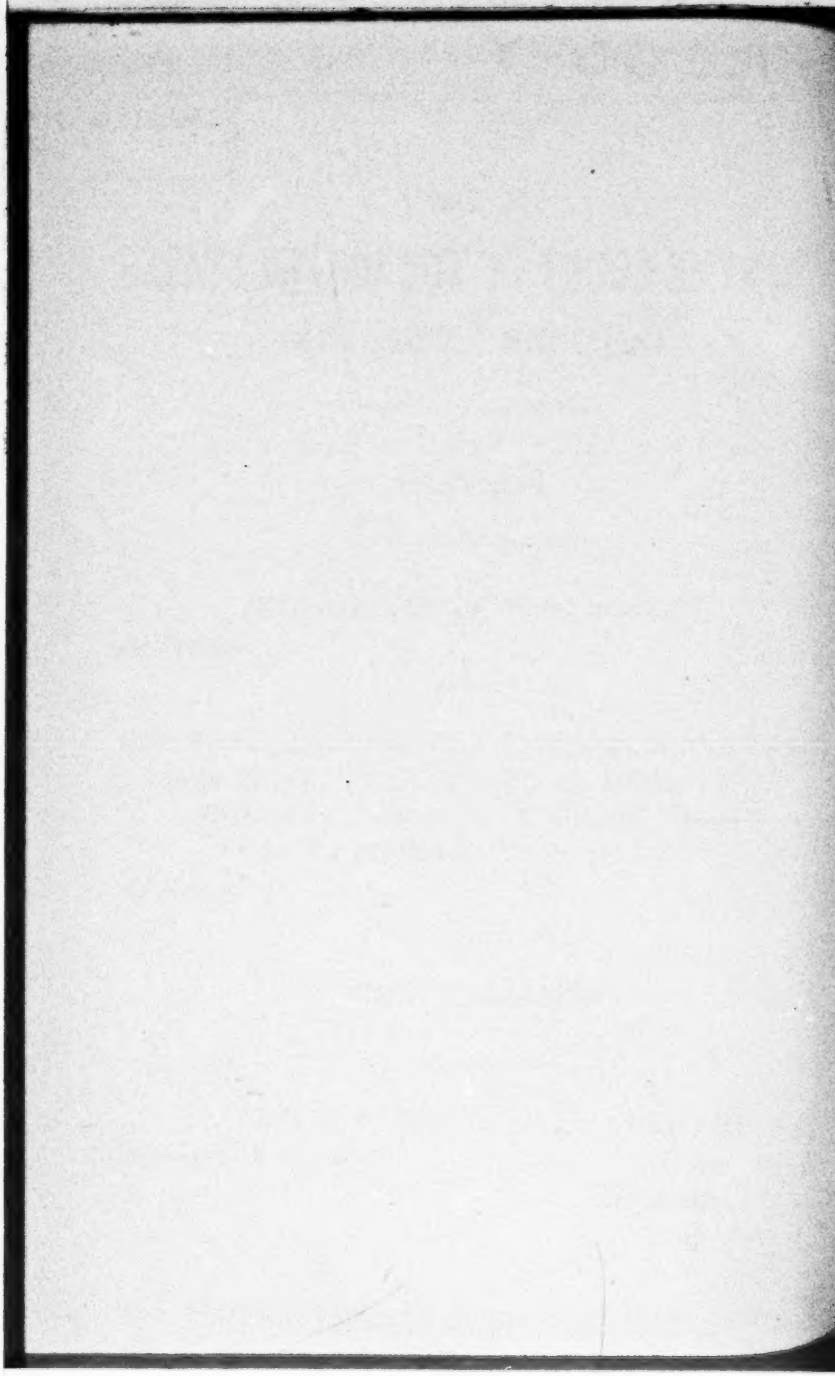

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Appellees.

APPELLEES' BRIEF.

STATEMENT OF THE CASE.

The statement of the allegations of the petition of appellant, as made in appellant's brief, is fair and accurate. We add thereto only the statement that the *quantum* of the assessment is not attacked.

STATEMENT OF FACTS.

In all cases where an assessment for taxes is alleged to violate the commerce clause of the Constitution as affecting property in transit in interstate or foreign commerce, a correct and complete conception of the facts is necessary. It is, therefore, essential that important omissions in appellant's statement of facts be supplied.

Oil is bought by the Carson Petroleum Company in various sections of the Mid-Continent Oil Fields, and is shipped to St. Rose, Louisiana, in tank cars consigned to the Petroleum Import and Export Corporation, its subsidiary (R. 13), and transferred from the tank cars to large storage tanks provided for its reception. The title to the oil is in the Carson Petroleum Company (R. 14). Insurance is carried on the oil for account of Carson Petroleum Company (R. 14), and it remains the property of the Carson Petroleum Company until, by loading aboard ship, it actually starts on its foreign journey destined to a new consignee (R. 15). No oil ever passes through St. Rose, Louisiana, on a through bill of lading (R. 14), and the quantity of a foreign shipment is never exactly pre-determined until loading is accomplished, the Carson Petroleum Company having the option of shipping, and the buyer taking ten (10%) per cent. more or less than his order (R. 10).

No showing is made that the oil in each railroad tank car is segregated or assigned or destined to any particular cargo or shipment abroad. A cargo is made up of the contents of from three to five hundred tank cars, twelve to sixteen trainloads (R. 10), and up to fifty tankers per year are shipped (R. 15).

THE PROPERTY ASSESSED WAS NOT IN TRANSIT.

It is thus completely shown that appellant's plant at St. Rose, Louisiana, is an *entrepôt* for the accumulation of oil which is not in transit in either interstate or foreign commerce. The interstate journeys are completed when the various shipments reach St. Rose, Louisiana, are delivered to the consignee and placed by it in storage tanks. The foreign journey does not begin until a cargo is determined upon, taken from the aggregate of these various shipments, loaded aboard ship, and consigned to a new consignee. In the meantime oil in the tanks at St. Rose, Louisiana, is property at rest in Louisiana and under the complete control of appellant. An assessment for taxes on the average quantity of oil there on hand, to-wit, $200,000.00, is not attacked as to *quantum*, and is apparently fair when it is remembered that as many as fifty shiploads of oil are started from this spot in a single year.

REPLY TO POINT I.

(a) It is idle to assert that the oil here assessed was on a continuous journey from the Mid-Continent Oil Fields to foreign destinations, when the record shows that the oil is bought at various refineries in the Mid-Continent section by appellant, shipped to the gathering place at St. Rose, Louisiana, and there delivered to its shipper and owner, appellant's subsidiary. It is the property of appellant at all times when it is in the tanks at St. Rose, Louisiana, and appellant's control of it is not lost until it is placed aboard ship and consigned to a new consignee. There are thus two journeys, or rather two kinds of journeys: many interstate journeys of the various cars or

trainloads from the Mid-Continent refineries to St. Rose, Louisiana, and one journey from St. Rose to points abroad. Between the points of origin and St. Rose, Louisiana, the journeys are continuous. Between St. Rose, Louisiana, and the foreign ports the journey is continuous, but there is a time between the end of the interstate journey and the beginning of the foreign journey that oil is at rest in the State of Louisiana and then the tax attaches.

The stoppage at St. Rose, Louisiana, was not an interruption only to promote safe and convenient transit, as in the case of *Champlain Realty Company v. Brattleboro, 260 U. S., 366*, where "the boom at the mouth of the West River did not constitute an *entrepôt* or *dépôt* for the gathering of logs preparatory for the final journey," but as in the case of *General Oil Company v. Crain, 209 U. S., 211*, the stoppage of the oil at St. Rose was because, "It had reached the destination of its first shipment, and it was held there, not in necessary delay or accommodation to the means of transportation, as in *State, Detnold, Prosecutor v. Engle, supra*, but for the business purposes and profit of the company. It was only there for distribution, it is said, to fulfill orders already received. But to do this required that the property be given a locality in the state beyond a mere halting in its transportation. It required storage there,—the maintenance of the means of storage; of putting it in and taking it from storage."

And complainant in the *General Oil Company v. Crain* case protested that it was impossible to fill small orders from the tank cars, because of the great delay and expense incident to such a plan, just as appellant here

protests that it is impossible to fill large tank ships from tank cars for the same reason, and in the *Crain* case, as in this, an extensive plant and apparatus were necessary to properly and conveniently unload and receive the oil from the tank cars. An account of appellant's methods, just as the account in the *General Oil Company v. Crain* case, "describes a business—describes a purpose for which the oil is taken from transportation, brought to rest in the State, and for which the protection of the State is necessary—a purpose outside the mere transportation of oil." And the tax on such oil was upheld.

As was said by the Supreme Court of Louisiana, it is impossible to distinguish the case at bar from that of *General Oil Company v. Crain.* To speak of these various shipments to St. Rose, Louisiana, their being gathered together in storage tanks at that point, and a cargo being there determined and loaded aboard a ship, and then consigned to one who up to that time had not entered into the picture, as a "continuous journey" from the Mid-Continent Oil Fields to a foreign port, we submit, is not impressive.

The fact that appellant enjoyed a low freight rate because of its intention to export the oil, does not indicate that the State is without power to tax such oil as is at rest in the State.

Swift & Company v. United States, 196 U. S., 400.

(b) The safety of the oil was but a single factor in the equipment set up at St. Rose, Louisiana, for its

handling. This equipment is the "extensive plant and apparatus" necessary to the carrying on of appellant's business at a profit. In this plant, as before stated, the various shipments from the Mid-Continent Oil Fields were collected and stored until a cargo was determined upon, drawn from the tanks to the capacity of the tank steamer, loaded on such steamer, and consigned abroad, there being shown no greater necessity for safety at this point than at any other oil storage place or *entrepôt*.

REPLY TO POINT II.

The freedom from state taxation of goods actually in transit in interstate or foreign commerce is necessarily admitted. The inability of the State to lay imposts or duties on imports or exports except what may be absolutely necessary for executing its inspection laws is admitted with equal candor. But we submit that the record conclusively shows the property herein assessed was not in transit in interstate or foreign commerce, but was between separate journeys at rest in Louisiana, kept there by its owner for its own business purposes and for its own profit, and was at all times under its complete control; that no attempt is made to levy any duty, but simply to collect from this property a just proportion of the general property tax as obtains in Louisiana.

REPLY TO POINT III.

The well-considered opinion of the Supreme Court of Louisiana (Tr. 22-31) demonstrates the correctness of its judgment herein. To the undisputed facts, and all of

them, in this case it has applied the law, as clearly laid down by this Honorable Court in the cases of *Coe v. Errol, 116 U. S., 517; Diamond Match Company v. Ontonagon, 188 U. S., 82; General Oil Company v. Crain, 209 U. S., 211*, as distinguished from and approved in *Champlain Realty Company v. Brattleboro, 260 U. S., 366.*

We submit that its judgment should be affirmed.

Respectfully submitted,

HARRY P. SNEED,
Counsel for Appellees.

A. P. FRYMIRE,
R. R. RAMOS,
C. S. LAGARDE,
Of Counsel.

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CHARLES ELMO

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928.

No. 306

CARSON PETROLEUM COMPANY,

Petitioner,

versus

LEON C. VIAL, SHERIFF AND TAX COLLECTOR OF THE PARISH OF ST. CHARLES; R. H. DeBROCA, ASSESSOR FOR THE PARISH OF ST. CHARLES, ET AL.

On Writ of Certiorari to the Supreme Court of the United States.

PETITION AND BRIEF FOR REHEARING.

HARRY P. SNEED,
Attorney for Petitioner.

A. P. FRYMIRE,
R. R. RAMOS,
C. S. LAGARDE,
Of Counsel.

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On Writ of Certiorari to the Supreme Court of the United States.

PETITION AND BRIEF FOR REHEARING.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petition of Leon C. Vial, Sheriff and Tax Collector for the Parish of St. Charles; Ralph A. Dubroca,

Assessor for the Parish of St. Charles, and the Louisiana Tax Commission, defendants and respondents in the above entitled cause, with respect represents:

That the opinion and decree herein handed down April eighth, 1929, reversing the judgment of the Supreme Court of Louisiana is erroneous, contrary to the law and evidence and prejudicial to the rights of petitioners, and that a rehearing should be granted herein for the following reasons, to-wit:

(1) That this Honorable Court erred in holding that the oil herein assessed had not acquired a situs in Louisiana for the purpose of taxation, the said oil being completely at rest at an assembling point in said state, wholly under control of its owner, in the hands of no agency by which transit could be effected, and awaiting the will and ability of the owner to determine the extent of cargoes and destinations and to prepare shipments.

(2) That this Honorable Court erred in adopting for the purposes of a decision herein *dicta* in rate cases which, so far as pertains to the case at bar, can only be *obiter dicta*, and in disregarding decisions in tax cases which should be controlling herein.

BRIEF.

Your Honors, in commenting on the decision in *General Oil Co. v. Cain, 209 U. S., 211*, say: "There has been a liberal construction of what is continuity of the journey, in cases where the Court finds from the circumstances that export trade has been actually intended and carried through." But with great respect, we ask if that liberality

has extended or can extend so as to limit a state's power to assess for taxation property, which, irrespective of the owner's intention as to its ultimate disposition, has acquired a tax situs in the state?

The decisions upon which the Court has based its opinion do not, we submit, so indicate. With the exception of *Spaulding Bros. v. Edwards, 262 U. S., 66, 70,* the opinions upon which your Honors' decision is founded are in **rate** cases, and the excepted case concerned a sale or broker's tax levied by the United States Government. The right of a state to tax property is in no way restricted by the decisions cited, but, on the contrary, the decisions themselves demonstrate their inapplicability to the case at bar.

In *Southern Pacific Terminal Co. v. Interstate Commerce Commission, 219 U. S., 498,* cited by your Honors, this court said:

"The **manufacture or concentration** on the wharves of the Terminal Company are but incidents," and were held not to be a sufficient interruption in transit to prevent the fixing of freight rates by the Interstate Commerce Commission. But would your Honors say for a moment that the stoppage of goods in order to allow them to **undergo a manufacturing process** would be insufficient to give them a tax situs in the state where the manufacturing operations are carried on? Certainly an affirmative answer would run counter to every decision of this court on the subject as hereinafter shown.

And, in the *Texas & New Orleans R. R. v. Sabine Tram Company* decision, *227 U. S., 111,* the court itself

points out the distinction between rate cases and tax cases in this regard when it says:

"Nor was there a break in **the sense of the interstate commerce law and the cited cases,** in the continuity of the transportation of the lumber to foreign countries by the delay and its tran-shipment at Sabine. *Swift & Company v. United States, 196 U. S., 375.* Nor, as we have seen, did the absence of a definite foreign destination alter the character of the shipments." By its reference to the *Swift* case the court beyond the shadow of a doubt meant to reiterate:

"But we do not mean to imply that the rule which marks the point at which state taxation or regulation becomes permissable necessarily is beyond the scope of interference by Congress," etc. So the right of the State of Louisiana to tax the oil herein involved did not preclude the fixing of railroad rates concerning it by the Interstate Tax Commission, and, *a fortiori*, the fixing of freight rates concerning the oil by the Commission did not prevent the taxation by the State of Louisiana of such portion of the shipments as were at rest in that state.

There is, we submit, no conflict between the decisions in the rate cases and those in the tax cases hereinafter cited. The ultimate intention of the owner may be the test in rate cases; indeed, the decisions strongly so incline.

In tax cases, however, it is not so because:

"The reach and consequences of the contention repel its acceptance. If the possibility, or, indeed, certainty of exportation of a product or article

from a State determines it to be in interstate commerce before the commencement of its movement from the State, it would seem to follow that it is in such commerce from the instant of its growth or production, and in the case of coals, as they lie in the ground. The result would be curious. It would nationalize all industries, it would nationalize and withdraw from State jurisdiction and deliver to federal commercial control the fruits of California and the South, the wheat of the West and its meats, the cotton of the South, the shoes of Massachusetts and the woolen industries of other States, at the very inception of their production or growth, that is, the fruits unpicked, the cotton and wheat ungathered, hides and flesh of cattle yet 'on the hoof,' wool yet unshorn, and coal yet unmined, because they are in varying percentages destined for and surely to be exported to States other than those of their production."

Heisler v. Thomas Colliery Company, 260 U. S., 244.

There is nothing novel or unique about the tax herein imposed by the State of Louisiana. In every state where the general property tax prevails a similar assessment would be made. The *quantum* of the assessment is manifestly just when it is remembered that it takes from forty five to ninety days to assemble enough oil to make up a cargo (R. 9) and fifty tankers per year constitute the limit of a year's shipments (R. 15). Certainly not less than sufficient oil to make up three cargoes is on hand at all times in St. Rose, enjoying all the protection the State can give, **not entered with a carrier nor any transit agency,** but awaiting the will of its holder and owner as to its ultimate disposition.

The case of *General Oil Co. v. Crain, 209 U. S., 211,* does not stand alone. While the facts in that case are more similar to the facts in the case at bar than are those in other cases cited, the principle therein enunciated differs in no manner from that laid down by this court in a long line of decisions.

In *Bacon v. Illinois, 227 U. S., 504,* your Honors said:

> "But neither the fact that the grain had come from outside the State nor the intention of the owner to send it to another State and there to dispose of it can be deemed controlling when the taxing power of the State of Illinois is concerned. The property was held by the plaintiff in error in Chicago for his own purposes and with full power of disposition. It was not being actually transported and it was not held by carriers for transportation. The plaintiff in error had withdrawn it from the carriers. The purpose of the withdrawal did not alter the fact that it had ceased to be transported and had been placed in his hands. He had the privilege of continuing the transportation under the shipping contracts, but of this he might avail himself or not as he chose. He might sell the grain in Illinois or forward it as he saw fit. It was in his possession with the control of absolute ownership. He intended to forward the grain after it had been inspected, graded, etc., but this intention, while the grain remained in his keeping and before it had been actually committed to the carriers for transportation, did not make it immune from local taxation. He had established a local facility in Chicago for his own benefit and while, through its employment, the grain was there at rest, there was no reason why it should not be included with his other property within the State in an assessment for taxation which was made in the usual way without discrimination."

It must be remembered that, according to the facts as found by the Supreme Court of Louisiana and by this Court, that the oil here assessed had been withdrawn from carriers, was not even in a public warehouse, but in the owner's own storage tanks; had not been segregated in any manner, but was as completely under the Carson Petroleum Company's control as the grain was under the owner's control in the *Bacon* case.

And the Court, in *Champlain Realty Company v. Brattleboro, 260 U. S., 375*, reviewing the *Crain* case, said:

> "So, in General Oil Co. v. Crain, 209 U. S., 211 (52 L. Ed., 754, 28 Sup. Ct. Rep., 475), the Oil Company had its principal place of business in Memphis, Tennessee, for the manufacture and sale of illuminating oils in interstate commerce. It imported oil from other States and put it into a tank, appropriately marked for distribution in smaller vessels to fill orders for oil already sold in Arkansas, Louisiana and Mississippi. The Court held that the first shipment had ended; that its storage at Memphis for division and distribution to various points was for the business purposes and profit of the company. The Court continued: 'It was only there for distribution, it is said, to fulfil orders already received. But to do this required that the property be given a locality in the State beyond a mere halting in its transportation.' (Page 231). The tank at Memphis thus became a depot in its oil business for preparing the oil for another interstate journey. So far as it bears upon this case, the American Steel & Wire Co. v. Speed, 192 U. S.,500, 48 La. Ed., 538, 24 Sup. Ct. Rep., 365, presented a similar state of facts and ruling."

In *Coe v. Errol, 116 U. S., 517*, Mr. Justice Bradley, in delivering the opinion of the Court, asks the question:

> "Do the owners state of mind in relation to the goods, that is his intent to export them, and his partial preparation so to do, exempt them from taxation?"

The answer was in the negative and for unassailable reasons.

The owner in the case at bar undoubtedly intended to export the oil from the concentration depot at St. Rose. Indeed, he had more orders for oil than was on hand. But he had done nothing more than to concentrate oil at a convenient place. He had not yet even determined the quantities of any prospective shipments. No buyer who had contracted for oil could go to St. Rose point to a storage tank or group of tanks and say, "My oil is here, my ship is at the dock, load it." Had a buyer attempted to do so, plaintiff would have been forced to answer: "I have no particular oil on its way to you. Your order is but one of many which I am trying to fill as rapidly as possible. I do not yet even know how much oil I am going to let you have. I must first 'measure your ship off' and determine her capacity; I may insist on your taking ten per cent more than your order, or I may have to give you ten per cent less."

Where we ask, with all deference, is such continuity of this shipment of oil from the mid-continent refineries to the foreign port as would relieve it from state taxation?

Counsel herein fully appreciate their temerity in suggesting error to so august a tribunal. They do so with all deference, but with the fervor of conviction that this honorable court has erred in applying to the decision in a tax case *dicta* which in such a matter can only be *obiter dicta;* which results in the overruling of every germane case and in denying to the State of Louisiana and by the precedent which the decision will establish to the other states of the union, their greatest attribute of sovereignty—the right to tax property at rest within their jurisdiction.

WHEREFORE your petitioners pray that a rehearing be granted herein, and that after due proceedings had, the opinion and decree herein handed down and rendered on the eighth of April, 1929, be recalled and the judgment of the Supreme Court of Louisiana be affirmed.

HARRY P. SNEED,
Attorney for Petitioners.

A. P. FRYMIRE,
R. R. RAMOS,
S. S. LAGARDE,
Of Counsel.

I, Harry P. Sneed, of counsel for petitioners in the foregoing petition for rehearing, do hereby certify that same has not been filed for delay, but in good faith and that I believe same to be well founded.

HARRY P. SNEED.

SUPREME COURT OF THE UNITED STATES.

No. 306.—October Term, 1928.

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Carson Petroleum Company, Petitioner,
vs.
Leon C. Vial, Sheriff and Tax Collector of The Parish of St. Charles; R. A. De Broca, Assessor for the Parish of St. Charles, et al.

On Writ of Certiorari to the Supreme Court of the State of Louisiana.

[April 8, 1929.]

Mr. Chief Justice Taft delivered the opinion of the Court.

This was a petition by the Carson Petroleum Company, a corporation of Delaware, to enjoin Leon C. Vial, sheriff and tax collector of the Parish of St. Charles, Louisiana, R. A. De Broca, assessor for the Parish, and the Louisiana Tax Commission, from laying and levying against it an alleged illegal assessment of duties on a quantity of oil in storage tanks at St. Rose in the Parish. They were ad valorem duties levied on all the property of the petitioner subject to taxation. The taxation was objected to because it was deemed an interference with interstate and foreign commerce.

The District Court granted the injunction on the ground that the oil was in transit from another State to a foreign country and was halted only temporarily at St. Rose and had no situs in the Parish or State. The Supreme Court of Louisiana reversed the decree and ordered that the tax be collected with the penalties imposed by law. 117 So. 432. There is no dispute about the facts. We avail ourselves of the statement made by the Chief Justice of the Supreme Court of Louisiana, which is a clear and fair presentation of the case:

"The Petroleum Import & Export Corporation is a subsidiary of the Carson Petroleum Company, and owns and operates the system of tanks and pumping equipment for receiving the contents of the railroad tank cars of oil into the tanks owned by the Petroleum Import & Export Corporation and afterwards loading it into

ships for export. The Port of New Orleans has no facility or equipment for assembling or receiving from railroad tank cars cargoes of oil and loading it aboard ships for export. The tanks and equipment at St. Rose, a few miles above New Orleans, were constructed for that purpose. No oil is sold at St. Rose except what is exported. The only business conducted there is the unloading of oil from railroad tank cars into the storage tanks and the loading of the oil from the storage tanks aboard the tankers for shipment to England, France, and other foreign ports. The oil is bought by the Carson Petroleum Company from the refiners in the Mid-Continent Field, comprising Kansas, Oklahoma and Texas, and is shipped to St. Rose, Louisiana, in railroad tank cars consigned to the Carson Petroleum Company. The shipments are not on through bills of lading, but on an export rate, which is lower than the domestic rate. The oil is a higher grade of gasoline than is used in this country generally, and is made especially for export, because the automobiles in England, France and other foreign countries require a higher grade of gasoline than that which is used in this country. The Carson Petroleum Company takes orders for cargoes of oil from the foreign buyers, who charter the vessels to transport the oil from St. Rose to the foreign ports. The company always has orders on hand in excess of the quantity of oil at St. Rose, and buys the oil in the Mid-Continent Field for the purpose of filling orders already received from the foreign buyers. The oil in each railroad tank car, however, is not segregated or assigned or destined to any particular cargo or shipment abroad, but is pumped into the large storage tanks, having the capacity of many tank cars, and is held in the tanks until a ship arrives, or until a sufficient quantity of oil is accumulated to make up a cargo. A ship carries from two to three million gallons; hence it takes 300 to 500 railroad tank cars, or 10 to 16 trains of tank cars, to make up a cargo of oil. The buyers are allowed a ten per cent leeway on the quantity of oil bought for each shipment; which, as we understand, means that, if the capacity of the ship is either more or less than the quantity of oil contracted for, the buyers can demand a delivery of the ship's capacity, at the contract price of the oil per gallon, provided the quantity shall be not more than ten per cent above or below the quantity contracted for. A delivery of the oil thus sold is made by loading the oil aboard the ship chartered by the buyer. Until the oil is thus loaded aboard a ship it belongs to the Carson Petroleum Company and is insured in the name of the company, loss payable to the company. There are times when an accumulation of oil in the tanks is awaiting the arrival of a ship, and at other times a ship is awaiting the accumulation of a sufficient quantity of oil to make up a cargo. In order to save demurrage on ships, which amounts to $1,500 or $2,000 per day on a ship, the Carson Company endeavors to have a sufficient quantity

of oil on hand at St. Rose to fill each order promptly on arrival of the ship. On account of the demurrage charges on tank cars, as well as on steamships, it would be impracticable to carry on the export oil business by any other method than by storing the oil in large storage tanks as the train loads of oil arrive, and shipping from the accumulation when the ships arrive. The oil is shipped from the storage tanks in the same condition in which it was received from the tank cars, without being treated in any way. The oil is never kept on hand at St. Rose any longer than is necessary. The quantity on hand is always awaiting either the arrival of a ship or the accumulation of a sufficient quantity to load a ship."

The Oil Company asserts that the interstate and foreign shipment of the oil, from the refineries in the Mid-Continent Field, into and across the State, and across the sea to the foreign ports, is a continuous interstate and foreign shipment, notwithstanding the stoppage and storage of the oil at St. Rose where it had to await either the arrival of a ship or the accumulation of a sufficient quantity of oil to load a ship. On the other hand, the State authorities claim that there were two separate shipments—the one which ended when the tank cars arrived and were unloaded at St. Rose, and the foreign shipment, which began when the oil was loaded aboard ship for a foreign port. Hence they contend that while the oil was stored in the tanks at St. Rose, under the protection of the State and local government, it was subject to State and local taxation, even though intended and prepared for exportation.

The crucial question to be settled in determining whether personal property or merchandise moving in interstate commerce is subject to local taxation is that of its continuity of transit. The leading case is that of *Coe* v. *Errol*, 116 U. S. 517, in which Mr. Justice Bradley for this Court laid down the principles that should be applied. It was a case of floating logs. There were two lots, one where the logs were cut in Maine, and were floated down the Androscoggin on their way to Lewiston, Maine, but after starting on the trip were detained for a season in New Hampshire by low water. It was held that they were free from local taxation in New Hampshire because they had begun the interstate trip and the cause of detention was to be found in the necessities of the passage and trip back to Maine, which was held to be continuous. This ruling which was by the State court of New Hampshire was approved by this Court. But in respect to the other lot, this Court found that the logs were gathered in New Hampshire in what the Court termed an "entrepot," looking to ultimate transportation to another State, but that

when taxed they had not started on their final and continuous journey, and hence were not in interstate commerce and were taxable.

In *Champlain Realty Co.* v. *Brattleboro*, 260 U. S. 366, logs gathered on the West River in Vermont for a destination in New Hampshire were held not taxable in Vermont, though detained for a considerable time by a boom at Brattleboro to await subsidence of high water in the Connecticut River. It was held that as the interruption was only to promote the safe or convenient transit, the continuity of the interstate trip was not broken, as shown in *State* v. *Engle*, 34 N. J. L. 425; *State* v. *Carrigan*, 39 N. J. L. 35, and in *Kelley* v. *Rhoads*, 188 U. S. 1, where sheep driven 500 miles from Utah to Nebraska, traveling 9 miles a day, were held immune from taxation in Wyoming, where they stopped and grazed on their way.

In *Hughes Brothers Co.* v. *Minnesota*, 272 U. S. 469, pursuant to a contract of sale, logs cut were gathered on the Swamp River in Minnesota by the vendors and were floated by river to Lake Superior, there loaded onto the vendee's vessels and transported to their destination in Michigan. This Court said, p. 475:

"The conclusion in cases like this must be determined from the various circumstances. Mere intention by the owner ultimately to send the logs out of the State does not put them in interstate commerce, nor does preparatory gathering, for that purpose, at a depot. It must appear that the movement for another State has actually begun and is going on. Solution is easy when the shipment has been delivered to a carrier for a destination in another State. It is much more difficult when the owner retains complete control of the transportation and can change his mind and divert the delivery from the intended interstate destination as in the Champlain Company case. The character of the shipment in such a case depends upon all the evidential circumstances looking to what the owner has done in the preparation for the journey and in carrying it out. The mere power of the owner to divert the shipment already started does not take it out of interstate commerce if the other facts show that the journey has already begun in good faith and temporary interruption of the passage is reasonable and in furtherance of the intended transportation, as in the Champlain case. Here the case is even stronger in that the owner and initiator of the journey could not by his contract divert the logs after they had started from Swamp river without a breach of contract made by him with his vendee, who, by the agreement of sale, divided with him the responsibility for the continuous interstate transportation."

The principle of continuity of journey is shown in *Ohio Railroad Commission* v. *Worthington*, 225 U. S. 101, where coal from the

Ohio mines intended for transportation on the lakes and stored for some weeks or months on docks in Cleveland for delivery beyond the lakes was held to be subject to interstate rates. So in *Western Oil Co.* v. *Lipscomb*, 244 U. S. 346, in which, speaking of the effect of billing and rebilling in causing a break in the trip, it was said, p. 349:

"Ordinarily the question whether particular commerce is interstate or intrastate is determined by what is actually done and not by any mere billing or plurality of carriers, and where commodities are in fact destined from one State to another, a rebilling or reshipment en route does not of itself break the continuity of the movement or require that any part be classified differently from the remainder. As this Court has often said, it is the essential character of the commerce, not the accident of local or through bills of lading, that is decisive."

An instance of interruption of railroad transportation is *Bacon* v. *Illinois*, 227 U. S. 504. Bacon, the owner of the grain, and the tax payer, had bought it in the South and had secured the right from the railroads transporting it to remove it from their custody to his private grain elevator in Illinois where for his own purpose he proceeded to inspect, weigh, clean, clip, dry, sack, grade or mix it, and had power under his contract with the carriers either to change its ownership, consignee or destination or to restore the grain, after the processes mentioned, to the carriers to be delivered at the destination in another State according to his original intention. The question was whether the removal of the grain to his private elevator interrupted the continuity of the transportation and made the grain subject to local taxation there. It was held that it did; that the grain was locally dealt with in the interest of the owner while it was in his custody and was subject to his complete disposition for a collateral business purpose of his own.

Another case is that of *General Oil Co.* v. *Crain*, 209 U. S. 211. The company conducted a large oil business in Memphis, where it gathered from the North much oil and maintained an establishment for its distribution. It had tanks of various sizes, from which the oil was put in barrels or other small vessels to be sold locally or in other States, or to fill orders already received from customers in Arkansas, Louisiana and Mississippi. For years the company had unloaded its oil from its tank cars on arrival into large stationary tanks indiscriminately, and had sold and distributed it as required in its business. After a time, in order to escape the

local inspection tax, part of the oil was deposited in a stationary tank No. 1 marked "Oil already sold in Arkansas, Louisiana and Mississippi", while the local oil and that yet to be sold was kept in other tanks. The oil in No. 1 was divided according to the orders already received into barrels and larger containers, to be forwarded by rail to customers in the three States named. It was contended that oil of tank No. 1 was on a continuous trip through Memphis from sources in the North to the ascertained customers in Arkansas, Louisiana and Mississippi, and was not taxable at Memphis. It was held that the doings of the company in thus separating the oil after it reached Memphis into various amounts in different containers was itself a local business in Memphis, and that the delivery into Memphis of the oil and its subsequent shipment made two separate interstate shipments and permitted local taxation on the oil while it awaited the second shipment. The Court seemed to regard the redistribution of the oil at Memphis as a rest interrupting the journey, and the Memphis yard for the tanks as an assembling entrepot like that described by Mr. Justice Bradley in *Coe* v. *Errol*.

The Court was divided and there was very vigorous dissent. The case has caused discussion and it must be admitted that it is a close one and might easily have been decided the other way. The result was probably affected by the impression created by the original situation and the somewhat artificial rearrangement of tanks in a large entrepot for redistribution of oil to avoid previous taxability.

We do not think in deciding the case at bar that we should give the *Crain* case the force claimed for it by the court below and by counsel for the State. Since its decision this Court has had to consider several cases where there was transshipment of the commodity from local carriage in a State to a ship at an export port and conveyance thence to a foreign destination. There has been a liberal construction of what is continuity of the journey, in cases where the Court finds from the circumstances that export trade has been actually intended and carried through.

In *Southern Pacific Terminal Co.* v. *Interstate Commerce Commission*, 219 U. S. 498, cotton oil cake and meal destined for export was bought by the intending exporter in Texas, Oklahoma and Louisiana. It was shipped to him on bills of lading and way bills showing the point of origin in those States and the destination at Gal-

veston. The purchases were made for export, there being no consumption of the products at Galveston. His sales to foreign countries were sometimes for immediate and sometimes for future delivery, irrespective of whether he had the product on hand at Galveston. At times he had it on hand. At other times orders must be filled from cake or meal to be purchased in the interior or then in transit to him. When the cake reached Galveston it was ground into meal and sacked by the exporter, and for the meal thus ground and such meal as had been bought in ground form he took out ships' bills of lading made to his order. The Court said, p. 526:

"The manufacture or concentration on the wharves of the Terminal Company are but incidents, under the circumstances presented by the record, in the transshipment of the products in export trade and their regulation is within the power of the Interstate Commerce Commission. To hold otherwise would be to disregard, as the Commission said, the substance of things and make evasions of the act of Congress quite easy. It makes no difference, therefore, that the shipments of the products were not made on through bills of lading or whether their initial point was Galveston or some other place in Texas. They were all destined for export and by their delivery to the Galveston, Harrisburg and San Antonio Railway they must be considered as having been delivered to a carrier for transportation to their foreign destination, the Terminal Company being a part of the railway for such purpose. The case, therefore, comes under Coe *v.* Errol, 116 U. S. 517, where it is said that goods are in interstate, and necessarily as well in foreign, commerce when they have 'actually started in the course of transportation to another State or delivered to a carrier for transportation.'"

In *Texas & New Orleans R. R.* v. *Sabine Tram Co.*, 227 U. S. 111, the question was whether the rates charged on shipments of lumber on local bills of lading from one point in Texas to another, but destined for export, were intrastate or foreign commerce. The exporter purchased the lumber from other mills in Texas with which to supply its sales in part. It did not know when any particular car of lumber left the starting point into which ship or to what particular destination the contents of the car would ultimately go, or on which sale it would be applied; this not being found out until its agent inspected the invoice mailed to and received by him after shipment. The lumber remained after arrival at the shipping port in the slips or on the dock until a ship chartered by the exporter arrived, when the exporter selected the lumber suited for

that cargo and shipped it to its destination. There was no local market for lumber at the port of shipment, the population of which did not exceed fifty, and the exporter had never done any local business at that point. This Court held that the shipments to the point of shipment from other points of Texas were in interstate and foreign commerce and should pay rates accordingly. The Court said, p. 126:

"The determining circumstance is that the shipment of the lumber to Sabine was but a step in its transportation to its real and ultimate destination in foreign countries. In other words, the essential character of the commerce, not its mere accidents, should determine. It was to supply the demand of foreign countries that the lumber was purchased, manufactured and shipped and to give it a various character by the steps in its transportation would be extremely artificial. Once admit the principle and means will be afforded of evading the national control of foreign commerce from points in the interior of a State. There must be transshipment at the seaboard, and if that may be made the point of ultimate destination by the device of separate bills of lading, the commerce will be given local character, though it be essentially foreign."

Again this Court said, p. 130:

"And the shipment was not an isolated one but typical of many others, which constituted a commerce amounting in the year 1905 to 14,667,670 feet of lumber, and in the year 1906, 39,554,000 feet. Nor was there a break, in the sense of the Interstate Commerce law and the cited cases, in the continuity of the transportation of the lumber to foreign countries by the delay and its transshipment at Sabine. Swift & Co. *v.* United States, 196 U. S. 375. Nor, as we have seen, did the absence of a definite foreign destination alter the character of the shipments."

See also *Railroad Commission* v. *Texas & Pacific Ry.*, 229 U. S. 336; *Spaulding & Bros.* v. *Edwards*, 262 U. S. 66, 70.

We do not think the *Sabine Tram* case can be distinguished from the one before us. It has been suggested that in the present case there was a failure to fix the exact point of destination abroad before shipment and that this prevents the continuity required in a continuous exportation. But there was the same indefiniteness on this point in the *Sabine Tram* case. Then, it is said, there was no separation of the various shipments of oil from the interior points to the tanks and thence to ships at the port of shipment. But in the *Sabine Tram* case cars of lumber were sent to the transshipment point without regard to the filling of one order or another.

In both cases the delay in transshipment was due to nothing but the failure of the arrival of the subject to be shipped at the same time as the arrival of the ships at the port of transshipment. The use of the tanks at the point of transshipment can not be distinguished from the storing of the lumber on the docks or in the slips between them till the vessel to carry it should be ready. The quickness of transshipment in both cases was the chief object each exporter plainly sought. In both cases the selection of the point of shipment and the equipment at that point were solely for the speedy and continuous export of the product abroad and for no other purpose. No lumber or oil was sold there but that to be exported. There was no possibility of any other business there. Whatever hesitation might be prompted in deciding this case, if the *Crain* case stood alone, the effect of the decisions of this Court since is such as to make it inapplicable to the case before us.

The judgment is reversed.

Mr. Justice McREYNOLDS and Mr. Justice SANFORD are in favor of affirming the judgment on the authority of *General Oil Co.* v. *Crain*, 209 U. S. 211.

A true copy.

Test:

Clerk, Supreme Court, U. S.